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Paper 38
Date: April 15, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MG FREESITES LTD.,
Petitioner,

v.

SCORPCAST, LLC,
Patent Owner.

IPR2020-01697
Patent 9,965,780 B2

Before FRANCES L. IPPOLITO, ERIC C. JESCHKE, and RICHARD H. MARSCHALL, *Administrative Patent Judges.*

IPPOLITO, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
Dismissing Petitioner's Motion to Exclude
35 U.S.C. § 318(a)

I. INTRODUCTION

Petitioner MG FreeSites Ltd. filed a Petition (Paper 1, "Pet.") requesting *inter partes* review of claims 9–11, 14–17, 20–22, and 24–26 of U.S. Patent No. 9,965,780 B2 (Ex. 1001, "the '780 patent"). Patent Owner Scorpcast, LLC filed a Preliminary Response (Paper 7). Based on the preliminary record, we granted institution of an *inter partes* review of claims 9–11, 14–17, 20–22, and 24–26. Paper 11 ("Dec.").

During trial, Patent Owner filed a Response (Paper 15, "PO Resp."). Petitioner filed a Reply (Paper 24, "Reply"), and Patent Owner filed a Sur-reply (Paper 26, "Sur-reply"). Additionally, Petitioner filed a Motion to Exclude (Paper 30, "Mot. Exclude"). Patent Owner filed an Opposition to that Motion (Paper 31), and Petitioner filed a Reply (Paper 32).

Oral argument took place January 19, 2022. A transcript of the argument has been entered. Paper 37.

This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). Having reviewed the arguments and the supporting evidence, we determine that Petitioner has shown, by a preponderance of the evidence, that claims 9–11, 14–17, 20–22, and 24–26 of the '780 patent are unpatentable.

A. Real Parties in Interest

Petitioner certifies that MG FreeSites Ltd. is the only real party-in-interest. Pet. xix.

B. Related Matters

According to the parties, Petitioner and Patent Owner are involved in multiple district court proceedings that may affect the '780 patent. First, the parties are or were involved in the proceedings below:

Case Caption	Number	Court
Scorpcast, LLC dba HaulStars v.	6:20-cv-	W.D. Tex.

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MG Freesites Ltd. ("WDTX Litigation")	00877	
MG FreeSites Ltd. v. Scorpcast, LLC dba HaulStars ("Delaware DJ Action")	1:20-cv-01012	D. Del.
Scorpcast, LLC dba HaulStars v. MG Freesites Ltd. ("Delaware Transferred Litigation")	1:21-cv-00887	D. Del.

See Paper 5, 1–4; Ex. 3006. We refer to *Scorpcast LLC dba HaulStars v. MG Freesites Ltd*, 6:20-cv-00877 (W.D. Tex.) as the "WDTX Litigation"[1], *MG FreeSites Ltd. v. Scorpcast, LLC dba HaulStars*, 1-20-cv-01012 (D. Del.) as the "Delaware DJ Action," and *Scorpcast, LLC dba HaulStars v. MG Freesites Ltd.*, 1:21-cv-00887 (D. Del.) as the "Delaware Transferred Litigation."

After institution, the Western District of Texas ("WDTX") granted Petitioner's motion to transfer the WDTX Litigation to Delaware. Ex. 3003. The WDTX Litigation was consequently transferred to the District of Delaware, becoming the Delaware Transferred Litigation. *See id.* Since then, the Delaware DJ Action and Delaware Transferred Litigation have been consolidated. Ex. 3006. As such, we also refer to the consolidated Delaware proceedings as the "Consolidated Delaware Litigation." *See id*.

In addition, Patent Owner also instituted eighteen (18) co-pending actions in the United States District Court for the Eastern District of Texas against content partners of Petitioner's www.pornhub.com website.

[1] The WDTX Litigation involves six patents related to the '780 patent. Ex. 1026, 7; *See* Paper 4, 1. The Delaware DJ Action involves the '780 patent. Ex. 3004 ¶ 2.

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Ex. 2001, 2. Each of these 18 complaints involves claims of the '780 patent. *Id.* at 2–4.

Case Caption	Number	Court	Consolidation
Scorpcast, LLC dba HaulStars v. All 4 Health SRL	2-20-cv-00192	E.D. Tex.	Consolidated with Case 2-20-cv-00193. Paper 5, 1–4.
Scorpcast, LLC dba HaulStars v. Boutique Media Pty Ltd.	2-20-cv-00193	E.D. Tex.	Consolidated with Cases 2-20-cv-00192; 2-20-cv-00198; 2-20-cv-00200; 2-20-cv-00203; 2-20-cv-00210. Ex. 3001.
Scorpcast, LLC dba HaulStars v. FUSEE BVBA	2-20-cv-00195	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. HMZ Invs. Ltd.	2-20-cv-00196	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Hot G Vibe	2-20-cv-00197	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. KB Prods., LLC	2-20-cv-00198	E.D. Tex.	Consolidated with 2-20-cv-00193. Paper 5, 1–4.
Scorpcast, LLC dba HaulStars v. Logical Int. BV	2-20-cv-00199	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Manica Media SL	2-20-cv-00200	E.D. Tex.	Consolidated with 2-20-cv-00193. Paper 5, 1–4.
Scorpcast, LLC dba HaulStars v. Media Sols. Canarias	2-20-cv-00201	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Miriskana Ltd.	2-20-cv-00202	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Oanasun Entm't SRL	2-20-cv-00203	E.D. Tex.	Consolidated with 2-20-cv-00193. Paper 5, 1–4.

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Case Caption	Number	Court	Consolidation
Scorpcast, LLC dba HaulStars v. Panda Hosting Ltd.	2-20-cv-00204	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Pioneer Stream Techs. Ltd.	2-20-cv-00205	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. PMG Entm't Ltd.	2-20-cv-00206	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Quicksol GmbH	2-20-cv-00207	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Straplezz Inc.	2-20-cv-00208	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Webtwo BV	2-20-cv-00209	E.D. Tex.	
Scorpcast, LLC dba HaulStars v. Bravomax Servs. Ltd.	2-20-cv-00210	E.D. Tex.	Consolidated with 2-20-cv-00193. Paper 5, 1–4.

Pet. xx–xxi. As indicated above, five of the district court proceedings in the Eastern District of Texas have been consolidated with *Scorpcast, LLC dba HaulStars v. Boutique Media Pty Ltd.*, 2-20-cv-00193 (E.D. Tex.). Ex. 3001. We refer to these six consolidated cases as the "Consolidated EDTX Litigation." *See id.* at 1–2.

C. The '780 Patent

The '780 patent issued from U.S. Application No. 15/688,566, which is a continuation of U.S. Application No. 14/180,241, now U.S. Patent No. 9,754,296 B2, which is a continuation of U.S. Application No. 13/804,121, now U.S. Patent No. 8,682,809 B2, which is: a continuation-in-part of U.S. Application No. 13/449,610, now U.S. Patent No. 8,615,474 B2;

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and a continuation-in-part of U.S. Application No. 13/451,478, now U.S. Patent No. 8,635,169 B2. Pet. 10; *see also* Ex. 1001, codes (21), (22) (63).

The '780 patent generally relates to content sharing and more specifically, to providing user-generated or -produced video reviews of products and/or services. Ex. 1001, 1:15–17. The '780 patent describes a user interface enabling a user to record or otherwise provide a user-generated video review. *Id.* at 10:46–54. The user-generated video review is then uploaded to a host website using the user interface. *Id.* at 11:13–16. The host website receives and stores a product tag associated with the user-generated video review. *Id.* at 12:4–5. The product tag is used to associate a product description to the reviewed product that is the subject of the user-generated video review. *Id.* at 12:42–43.

The '780 patent further describes that a given product review within the video review file may be time stamped, indicating at what point in time in the video review file the review of the given product begins. *Id.* at 27:7–10. The time stamp, which may be in the form of a "start" tag automatically generated by the user indicating where the start of the product review is, may be recorded in metadata associated with the video review. *Id.* at 27:10–14. Further, an image from a given product review may be displayed in a scrubber area. *Id.* at 27:24–27. For example, the scrubber area may display images of products being reviewed in the scrubber area, where a given product image is displayed in the scrubber timeline at a location corresponding to where the review of the respective product begins. *Id.* at 27:27–32.

When a video review is posted, viewers of the video review may provide, via a user interface, comments regarding a given product review within the video review. *Id.* at 27:43–46. The comments may be

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specifically linked to the corresponding product review within the video review so that when a viewer is viewing the video review file and the comments, the set of comments provided for display by the posting system will dynamically change depending on the product review in the video review file currently being displayed. *Id.* at 27:49–54.

Figure 10, reproduced below, illustrates an example review playback interface.



FIG. 10

Figure 10 illustrates an example user interface for publishing a user-generated video review. *Id.* at 9:37–38. As illustrated in Figure 10, while video review 1020 is being played for a viewer, various items of information 1018 (e.g., name and/or brand of item being reviewed, a relatively small still image of the item being reviewed, and/or the name of the reviewer) may overlay (or be provided adjacent to) video review 1020 in one or more information areas. *Id.* at 28:12–21. User accessible controls 1004, 1006, 1008 may be provided via which a view of the video review can purchase

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the item being reviewed, poll their friends regarding the item being reviewed, record their own review, indicate that the viewer wants the item being reviewed, and share the review. *Id.* at 28:21–29. Further, an image and one or more associated tags (e.g., a review name and/or name of item being reviewed) 1003 from the current item review being viewed, and one or more images and/or tags 1015 of other item reviews, may be displayed in the scrubber area 1002. *Id.* at 28:63–29:1. A viewer may click on or otherwise select a given product image and/or tag in scrubber area 1002, and the video player will jump to the corresponding item review. *Id.* at 29:1–4.

D. Challenged Claims

Petitioner challenges claims 9–11, 14–17, 20–22, and 24–26. Claims 9 and 20 are independent claims, and are reproduced below:[2]

> [9.P] 9. A system, comprising:
>
> [9.1] at least one processing device;
>
> [9.2] a network interface configured to communicate over a network with a video data store;
>
> [9.3] non-transitory memory storing programmatic code that when executed by the at least one processing device, cause the system to perform operations comprising:
>
> [9.4] receive, over a network using the network interface, a first video;
>
> [9.5] store an association of a first image not from the first video and/or a first text with a first start time;
>
> [9.6] store an association of a second image not from the first video and/or a second text with a second start time;
>
> [9.7] cause the first image and/or the first text to be presented at the first start time, during playback of the of the first

[2] Claims 9 and 20 are reproduced with Petitioner's labels. Pet. xii–xiii, xv–xvi.

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video, in or adjacent to a playback area of a video player via a user device;

[9.8] cause the second image and/or the second text to be presented in place of the first image and/or the first text at the second start time during a playback of the first video in or adjacent to the playback area of the video player via the user device;

[9.9] enable a corresponding navigation event to occur at least partly in response to a user selecting: the first image and/or the first text during a playback of the first video, wherein the first image and/or the first text is presented in or adjacent to the playback area; or

[9.10] the second image and/or the second text during a playback of the first video, wherein the second image and/or the second text is presented in or adjacent to the playback area.

[20.P] 20. A system, comprising:

[20.1] at least one processing device;

[20.2] a network interface configured to communicate over a network with a video data store;

[20.3] non-transitory memory storing programmatic code that when executed by the at least one processing device, cause the system to perform operations comprising:

[20.4] provide over a network, using the network interface, to a first user device a user interface that enables a user to associate, with respect to a given video, an image not from the given video and/or text with a user-specified position of the given video;

[20.5] receive, over the network using the network interface, a first video;

[20.6] receive, via the user interface that enables a user to associate an image not from the given video and/or text with a user-specified position of the given video, from the first user device an association of a first image and/or a first text with a first start position of the first video;

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> [20.7] store the association of the first image and/or a first text with the first start position;
>
> [20.8] cause the first image and/or the first text to be presented at the first start position, during playback of the of the first video, in or adjacent to a playback area of a video player via a second user device;
>
> [20.9] enable a corresponding navigation event to occur at least partly in response to a user selecting: the first image and/or the first text during a playback of the first video, wherein the first image and/or the first text is presented in or adjacent to the playback area.

Ex. 1001, 46:17–48, 47:54–48:19.

E. Asserted Grounds and Evidence

Petitioner asserts the following grounds of unpatentability listed in the table below:

Claim(s) Challenged	35 U.S.C. §[3]	Reference(s)/Basis
9, 10, 14–17, 20, 21, 24–26	102(b)	Sterner[4]
9, 10, 14–17, 20, 21, 24–26	103(a)	Sterner
10, 21	103(a)	Sterner, Badoiu[5]
11, 22	103(a)	Sterner, Ahanger[6]

[3] The Leahy-Smith America Invents Act ("AIA") includes revisions to 35 U.S.C. §§ 102 and 103 that became effective on March 16, 2013. Because the '780 patent has an effective filing date before March 16, 2013, we apply the pre-AIA version of the statutory basis for unpatentability.
[4] Sterner et al., U.S. Patent Application Publication No. 2007/0263984 A1, published Nov. 15, 2007 (Ex. 1004) ("Sterner").
[5] Badoiu et al., U.S. Patent Application Publication No. 2009/0210779 A1, published Aug. 20, 2009 (Ex. 1007) ("Badoiu").
[6] Ahanger et al., U.S. Patent Application Publication No. 2008/0307454 A1, published Dec. 11, 2008 (Ex. 1008) ("Ahanger").

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Claim(s) Challenged	35 U.S.C. §[3]	Reference(s)/Basis
17, 20, 24–26	103(a)	Geer[7], Fink[8]
9, 14–16	102(a)	Geer
9, 14–16	103(a)	Geer
21	103(a)	Geer, Fink, Badoiu
10	103(a)	Geer, Badoiu
11, 22	103(a)	Geer, Fink, Ahanger

Pet. 1–2. In addition to the references listed above, Petitioner relies on the Declaration of Dr. Adam Porter (Ex. 1002). Patent Owner relies on Declarations of Ricardo Valerdi, Ph.D (Ex. 2089), Narbeh Avedissian (Ex. 2092), and Nikhil Sreenath (Ex. 2093).

II. ANALYSIS

A. Level of Ordinary Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. United States*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

Petitioner contends that a person of ordinary skill in the art at the time of the invention of the '780 patent would have had the following education and experience: "a Bachelor's degree in Electrical Engineering, Computer Engineering, or Computer Science (or the equivalent degree) plus approximately two years of work experience with technologies relating to

[7] Geer, III et al., U.S. Patent Application Publication No. 2011/0112915 A1, published May 12, 2001 (Ex. 1005) ("Geer").
[8] Fink et al., U.S. Patent Application Publication No. 2009/0300475 A1, published Dec. 3, 2009 (Ex. 1006) ("Fink").

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content annotation and/or content sharing among multiple users." Pet. 17. Petitioner adds that "[m]ore education can supplement work experience and vice versa." *Id.* (citing Ex. 1002 ¶¶ 1–21).

Patent Owner does not dispute this level of skill. PO Resp. 10.

We adopt Petitioner's proposal as reasonable and consistent with the prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

B. Principles of Law

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832–33 (Fed. Cir. 1990).

In *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), the Supreme Court set out a framework for assessing obviousness under § 103 that requires consideration of four factors: (1) the "level of ordinary skill in the pertinent art," (2) the "scope and content of the prior art," (3) the "differences between the prior art and the claims at issue," and (4) "secondary considerations" of non-obviousness such as "commercial success, long-felt but unsolved needs, failure of others, etc." *Id.* at 17–18.

We note that, with respect to the fourth *Graham* factor, the record in this proceeding does not include any argument or evidence directed to secondary considerations of nonobviousness.

C. Claim Construction

In this *inter partes* review, claims are construed using the same claim construction standard that would be used to construe the claims in a civil

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action under 35 U.S.C. § 282(b). *See* 37 C.F.R. § 42.100(b) (2020). The claim construction standard includes construing claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art at the time of the invention. *See id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (en banc). In construing claims in accordance with their ordinary and customary meaning, we take into account the specification and prosecution history. *Phillips*, 415 F.3d at 1315–17.

Additionally, only terms that are in controversy need to be construed, and these need be construed only to the extent necessary to resolve the controversy. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that "only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy"); *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs.* in the context of an *inter partes* review).

In the Institution Decision, we did not construe any claim terms expressly because the claim terms were neither in dispute nor dispositive at that preliminary stage. Dec. 29.

After institution, Magistrate Judge Payne in the Consolidated EDTX Litigation issued a Claim Construction Opinion and Order construing six terms of the '780 patent. Ex. 2090. That Claim Construction Opinion and Order issued on May 13, 2021. *Id.* Subsequently, on June 8, 2021, Judge Gilstrap adopted those constructions in the Consolidated EDTX Litigation. Ex. 3007.

Below we discuss the claim term "scrubber area," which was one of the terms at issue in the Consolidated EDTX Litigation's claim construction.

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1. "Scrubber Area"

Based on the complete record, Patent Owner urges us to adopt the Consolidated EDTX Litigation's construction of "scrubber area," which appears in dependent claims 15 and 25. PO Resp. 23–29.

Claim 15 depends from independent claim 9 and further recites the "video player is configured to: display the first image and/or the first text, and the second image and/or the second text, in a *scrubber area, the scrubber area comprising a slider tool that enables a user to scrub forwards through the first video by dragging the slider tool*." Ex. 1001, 47:29–35 (emphases added).

Claim 25 depends from claim 20 and similarly requires "display the first image and/or the first text in a *scrubber area, the scrubber area comprising a slider tool that enables a user to scrub forwards through the first video by dragging the slider tool*." Ex. 1001, 48:62–67 (emphases added).

a) Patent Owner's Contentions

With respect to these limitations, Patent Owner contends that the District Court for the Eastern District of Texas ("EDTX") determined that "scrubber area" should be accorded its plain and ordinary meaning, which may include areas adjacent to a scrubber bar "if only such areas enable a user to move to desired locations in a video." PO Resp. 23 (citing Ex. 2090). Patent Owner contends that the EDTX reached its conclusions with full awareness of this IPR and the arguments made by Petitioner. *Id.* at 25.

b) Petitioner's Contentions

Petitioner contends that it did not participate in the Consolidated EDTX Litigation and that the Board is not bound by the EDTX claim

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construction. Reply 19. Petitioner adds that the '780 patent teaches that the "scrubber area" includes "an area adjacent to the scrubber bar" without a functionality requirement. *Id.* (citing Ex. 1001, 2:42–48). Petitioner further observes that Figure 10 of the '780 patent is described as having scrubber area 1002 with nonfunctional aspects. *Id.* at 20 (citing Ex. 1001, Fig. 10, 28:52–29:4, 30:11–14). Petitioner further directs us to the testimony of Patent Owner's declarant, Dr. Valerdi, who testifies that a person of ordinary skill in the art ("POSITA") would have understood Figure 4 of the '780 patent to include features without scrubbing functionality. *Id.* at 20–21 (citing Ex. 1033, 121:10–125:21, 204).

c) Discussion

To start, we discuss the parties' proposed constructions in light of the timeline of this proceeding and the related litigations.

As mentioned above, Patent Owner is involved in the Consolidated EDTX Litigation against several defendants. *See supra* Section I.B. In the Consolidated EDTX Litigation, Magistrate Judge Payne issued the Claim Construction Opinion and Order construing, *inter alia*, "scrubber area," on **May 13, 2021**. Ex. 2090. After that, Judge Gilstrap adopted the Claim Construction Opinion and Order on **June 8, 2021**. Ex. 3007.

Contrary to Patent Owner's representation in its Response, Petitioner **is not** a party in the Consolidated EDTX Litigation. *See* Ex. 2090; *see* PO Resp. 23 ("Petitioner and Patent Owner argued before EDTX district court concerning the meaning of the term 'scrubber area' in claim 25."). Indeed, Petitioner did not participate in the Consolidated EDTX Litigation's claim construction by, for example, submitting briefing, argument, or evidence. Rather, Petitioner initially filed a declaratory judgment action in the District

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Court of Delaware, which we refer to as the Delaware DJ Action. In that proceeding, Petitioner sought a determination that its website does not infringe and has not infringed any claim of the '780 patent, including claims 20, 21, and 25. Ex. 3004 ¶ 2.

Separately, in the WDTX Litigation, Patent Owner filed a suit against Petitioner alleging infringement of six patents related to the '780 patent. Dec. 14. There, Petitioner filed a Motion to Transfer Venue to the District Court of Delaware. *Id.*; Ex. 1026; Ex. 3003. On June 21, 2021, Judge Albright granted Petitioner's motion. Ex. 3003.

After transfer, the District Court in Delaware issued a Scheduling Order (Ex. 3006), in which the court noted that the issued schedule applies to both the Delaware DJ Action and the Delaware Transferred Litigation, which have since been consolidated ("Consolidated Delaware Litigation"). *See* Ex. 3004, 1–2 n.1. According to the Scheduling Order in the Consolidated Delaware Litigation, claim construction briefing will continue until **April 14, 2022**, and the Claim Construction Hearing has been set for **May 19, 2022**. Ex. 3006, 29. We note that the briefs in the Consolidated Delaware Litigation address the claim term "scrubber area" recited in claims 15 and 25. Ex. 3005, Ex. A, 2–3.

In relation to the instant proceeding, we observe further that the cross-examination of Dr. Valerdi's testimony took place on **September 24, 2021**. Ex. 1033. As such, his deposition testimony was not available until **after** the Consolidated EDTX Litigation issued and adopted the Claim Construction Opinion and Order on May 13, 2021, and June 8, 2021. Ex. 2090; Ex. 3007.

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With this time-frame in mind, we consider the Consolidated EDTX Litigation's construction as part of our analysis based on the complete record in this proceeding.

Patent Owner's proposed construction is the same as that of the EDTX. Namely, Patent Owner proposes that "scrubber area" may include an area adjacent to a scrubber bar but that "the adjacent area is also a scrubbing area that enables the user to select a particular time of frame for playback." Ex. 2090, 23; *see* Sur-reply19–20. Petitioner contests that this adjacent area must include scrubbing functionality. Reply 19.

We begin with the plain language of claim 25, which is essentially the same as that recited in claim 15. Claim 25 requires "the scrubber area comprising a slider tool that enables a user to scrub forwards through the first video by dragging the slider tool." Ex. 1001, 48:62–67. We note, as the EDTX has done, that claim 25 uses an open-ended "comprising" transition that indicates the scrubber area may include more than the slider tool. *Id.*; *see also* Ex. 2090, 23. We further note that claim 25 does not itself expressly indicate what other components/features the scrubber area may include. Ex. 1001, 48:62–67.

In this regard, the Specification of the '780 patent teaches that

> at state 2012, the identified video reviews are provided for display on the user terminal, organized in categories, with selected representative item review frames displayed in the scrubber area (e.g., on the scrubber or adjacent to the scrubber). *The entire scrubber area, or a subset thereof, including the representative frame, may be a hot spot, wherein if the user clicks anywhere in the hotspot, the corresponding item review is played back*. Thus, optionally, the searching user does not have to manually manipulate the scrubber control to the desired item review start location.

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Ex. 1001, 31:61–32:4 (emphases added). Additionally, with reference to Figure 10, the '780 patent teaches that tags 1016 of items "*may* be displayed in the scrubber area 1002." *Id.* at 28:66–29:1 (emphasis added). Further, "[i]n certain embodiments, a viewer may click on or otherwise select a given product image . . . or tag in the scrubber area . . . and the video player will jump to the corresponding item review." *Id.* at 29:1–4.

With respect to the above disclosure, we observe that the '780 patent teaches that the entire scrubber area "may" be a hot spot for clicking a particular time for playback, and that in "certain embodiments" a viewer can click on a tag in the scrubber area to "jump to the corresponding item review." We read these teachings to be permissive rather than proscriptive, without requiring all components in the scrubber area to have scrubbing functionality. *See id.* Our reading is consistent and supported by the Specification. For example, with reference to Figure 10, the '780 patent teaches that tags 1016 "may be displayed in the scrubber area 1002." Ex. 1001, 28:66–29:1. However, as shown in Figure 10, tag 1016 is located on the same bar as user accessible controls 1004, 1006, 1017. *Id.* at 28:21–29. The '780 patent teaches that these other controls, e.g., 1004, 1006, 1017, "may be provided via which a viewer of the video review can purchase the item being reviewed, poll their friends regarding the item being reviewed (as similarly described elsewhere herein) . . . and share the review (e.g., via instant message, email, posting on a social network page, or otherwise)." *Id.* at 28:21–29. Although tag 1016 may arguably include scrubbing functionality, the other controls 1006, 1017 that are located in the same area do not have that same scrubbing functionality. *Id.* Moreover, scrubber area 1002 in Figure 10 appears as a contiguous rectangle that includes a volume

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control and "full screen" area to click, both without scrubbing functionality.[9] *Id.* at Fig. 10. In this way, we understand the Specification to teach that the scrubber area more broadly includes an area adjacent to the scrubber bar that may not have scrubbing functionality. *See* Ex. 1001, 2:43–48. Consequently, we do not construe the plain and ordinary meaning of "scrubber area" to require scrubbing functionality in the area adjacent to the scrubber bar.

In this proceeding, neither party relies upon the prosecution history of the '780 patent or any related patent. And, we do not find the prosecution history particularly informative as to the disputed aspect of the meaning of "scrubber area." *See generally* Ex. 1009 (prosecution history of the '780 patent).

Moreover, we observe that our construction is consistent with and supported by the extrinsic evidence provided by the cross-examination testimony and admissions of Patent Owner's own expert, Dr. Valerdi. Again, Dr. Valerdi's cross-examination was taken by Petitioner in this proceeding after the May 13, 2021 Claim Construction Opinion and Order was issued in the Consolidated EDTX Litigation. *See* Ex. 1033. At his deposition, Dr. Valerdi opined that Figure 4 of the '780 patent contained a scrubber area that included an add tag button, a volume control button, and a

[9] We note that the EDTX observed that the '780 patent "discloses areas adjacent to a scrubber that are described as distinct from the scrubber area." Ex. 2090, 24. The EDTX cites to Figure 10 and the written disclosure spanning column 28, lines 11 through column 29, line 4. *Id.* However, as discussed, the '780 patent expressly teaches that tags 1016 shown in Figure 10 "may be displayed in the scrubber area 1002." Ex. 1001, 28:66–29:1. Tags 1016 are on located on a different rectangular bar 1004 while still "displayed in the scrubber area 1002." *Id.*

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video time indicator. Ex. 1033, 124:14–125:6. Dr. Valerdi provided this testimony after marking the "scrubber area" of Figure 4 with a red rectangle. That annotated Figure 4 is provided below:

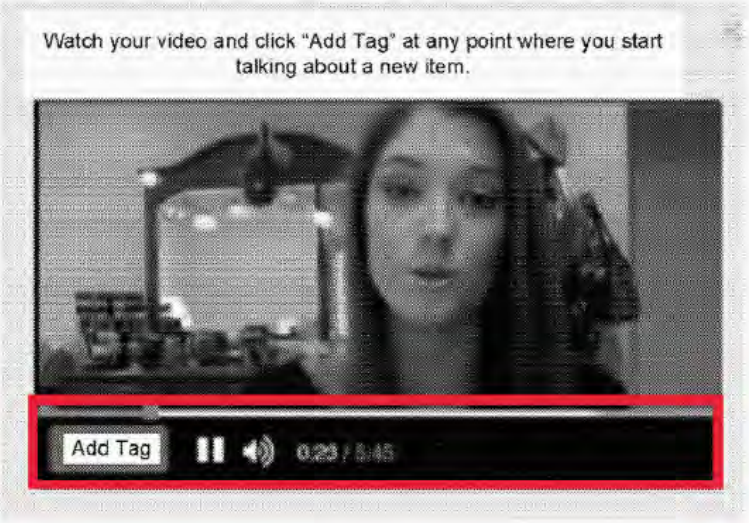


FIG. 4

Consistent with our construction of "scrubber area," Dr. Valerdi's annotated "scrubber area" includes an area that does not have scrubbing functionality, e.g., volume control and add tag button.

We recognize that our construction of "scrubber area" is different from the Consolidated EDTX Litigation. But as explained above, the '780 patent describes non-scrubbing functionality in the scrubber area, e.g., user accessible controls 1004, 1006, and 1017. Moreover, we are constrained by our record, which differs from that of the Consolidated EDTX Litigation. For one, Petitioner is not a party to that litigation, and has provided persuasive arguments and evidence related to claim construction of this term in the instant proceeding. And, further, the cross-examination testimony of

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Patent Owner's expert, Dr. Valerdi, was also not available in the Consolidated EDTX Litigation. Thus, while, pursuant to 37 C.F.R. § 42.100(b), we have considered the Consolidated EDTX Litigation's Claim Construction Memorandum Order and Opinion, we determine that on our particular record, which differs from that before the EDTX, that the intrinsic and extrinsic evidence does not require all of the scrubber area to provide scrubbing functionality. To do otherwise would limit claims 15 and 25 to specific disclosed embodiments, which we decline to do based on the particular record in the instant proceeding.

2. Other Terms

We determine that for the purposes of this Decision, it is unnecessary to expressly construe other claim terms. *See Vivid Techs.*, 200 F.3d at 803 (only terms in controversy must be construed and only to the extent necessary to resolve the controversy); *see also Nidec Motor*, 868 F.3d at 1017 (citing *Vivid Technologies* in the context of an *inter partes* review).

D. Overview of the Prior Art

1. Summary of Sterner

Sterner describes a system and method for enhancing and handling online video data for use with property-related commerce and communication. Ex. 1004 ¶ 55. The system and method generate video cue points, and use the video cue points to generate video montage files and for handling video montage files. *Id.* Figure 1A, reproduced below, illustrates an example system.

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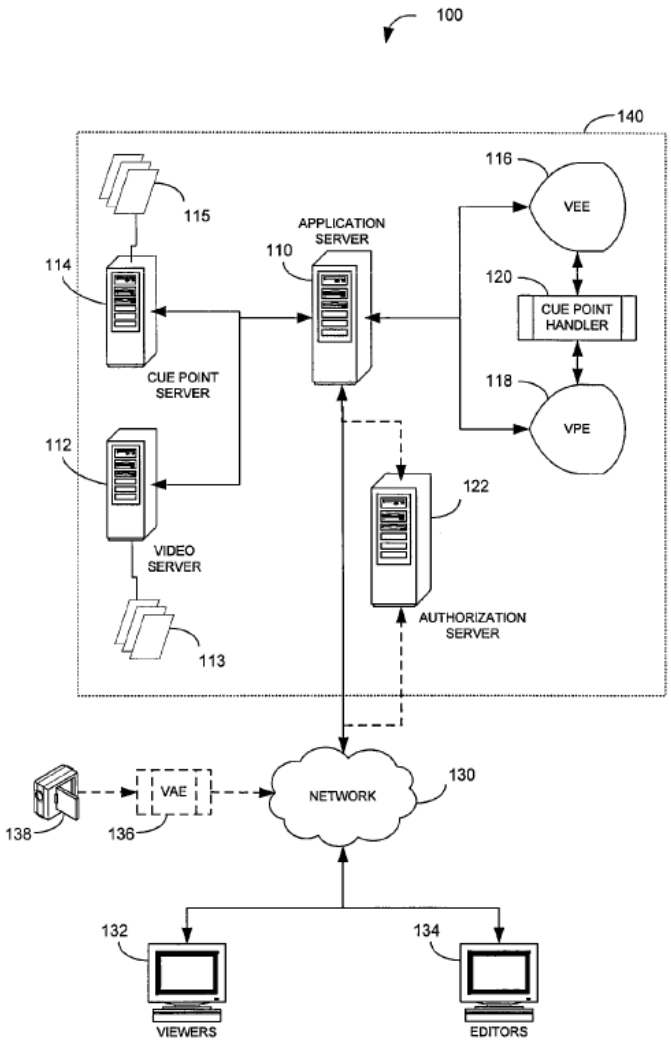


Fig. 1A

Figure 1A above illustrates a system for handling video cue points. *Id.* ¶ 56. System 100 comprises application server 110 configured to execute, and possibly store, one or more applications. *Id.* Application server 110 is in communication with one or more video servers 112, which stores and/or serves video files 113. *Id.* ¶ 57. Application server 110 is also in communication with one or more cue point servers 114, which stores and/or serves cue point information 115. *Id.* ¶ 60. Cue points refer to indexed time positions or tags anywhere within a video file. *Id.* ¶ 61. Additionally,

application server 110 is configured to handle various applications, including Video Editing Environment (VEE) 116 and/or Video Playback Environment (VPE) 118. *Id.* ¶ 68.

An example VEE is illustrated in Figure 6, reproduced below.

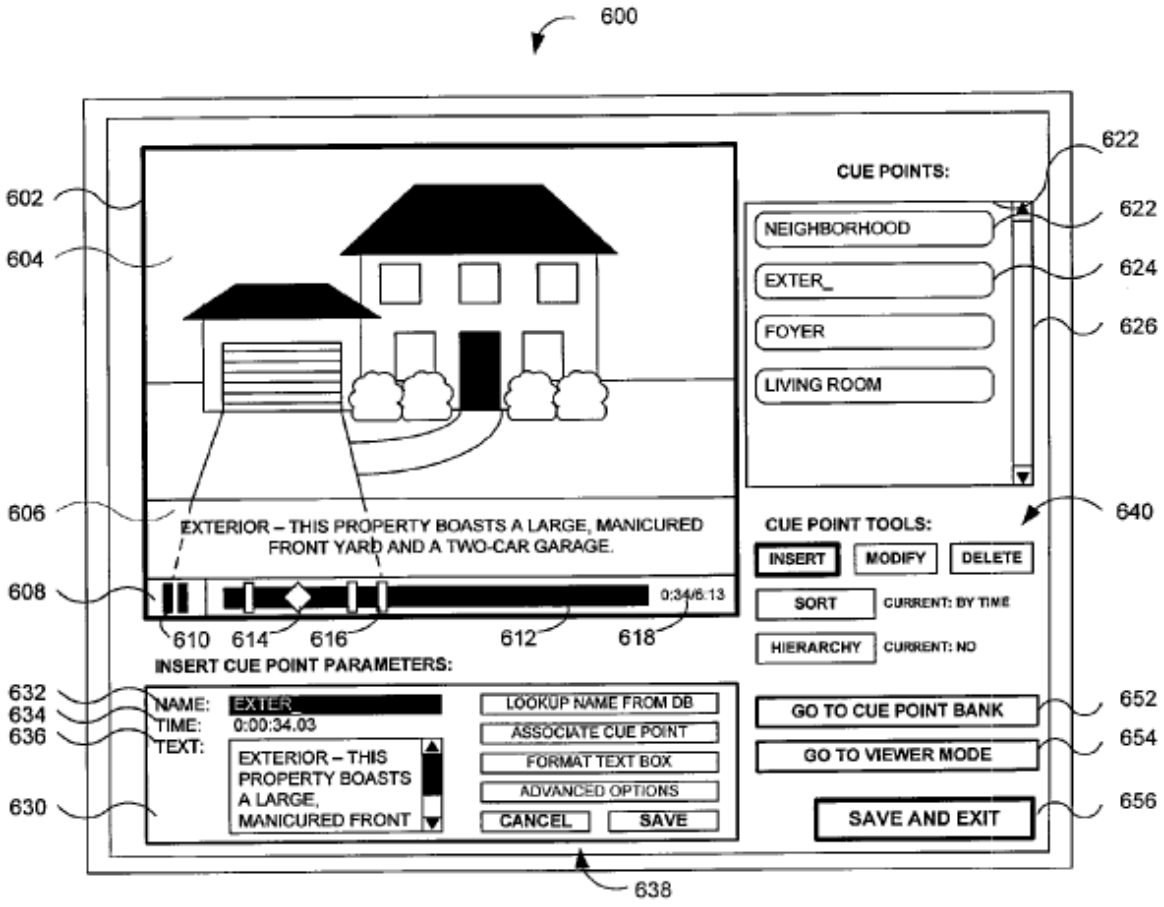


Fig. 6

Figure 6 above provides an example screen shot of a VEE as viewed by a client terminal. *Id.* ¶ 166. Cue point editor screen 600 illustrated above includes video frame 602 configured to display video data and to allow for interactive video manipulation. *Id.* ¶ 167. Video frame 602 includes video footage area 604, comment area 606, and navigation area 608. *Id.* Comment area 606 displays text, images, videos, or other information describing or adding to the footage seen in video footage area 604. *Id.*

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¶ 168. Additionally, comment area 606 responds to interaction by a client or other function. *Id.* ¶ 169. As an example, the text information in or associated with comment area 606 is indexable, searchable, or selectable (e.g., able to be copied to a text file). *Id.* Comment area 606 may comprise interactive elements, like hyperlinks or GUI elements, which allow the client to interact with comment area 606 (e.g., to navigate to a different location, to open the information into a new frame, to acquire related information, etc.). *Id.* Navigation area 608 comprises any number of navigation controls for navigating, processing, manipulating, or otherwise affecting video or audio elements (e.g., virtual buttons, such as a "pause" button). *Id.* ¶ 170.

An example VPE is illustrated in Figure 11C, reproduced below.

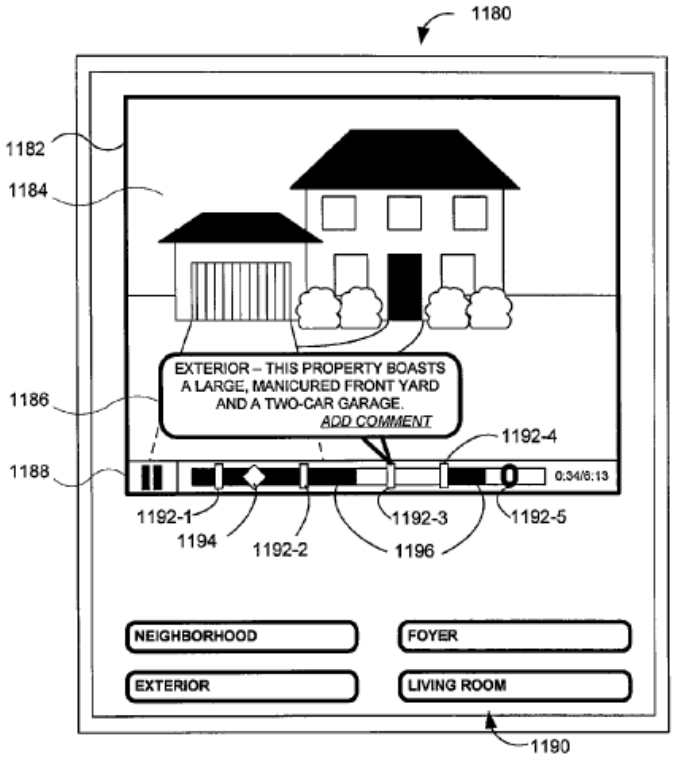


Fig. 11C

Figure 11C above provides an example screen shot of a VPE as viewed by a client terminal. *Id.* ¶ 230. As illustrated above, video playback screen 1180

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comprises video frame 1182 configured to display video data and to allow for interactive video manipulation. *Id.* Video frame 1182 comprises video footage area 1184, comment area 1186, and navigation area 1188. *Id.* Comment area 1186 may display text, images, video, or other information describing or adding to the footage seen in video footage area 1184. *Id.* ¶ 231. Comment area 1186 may appear when a client interacts with cue point location identifier 1192 or whenever a cue point location is reached. *Id.* Comment area 1186 may comprise graphical user interface (GUI) controls, hyperlinks, or other modes of interactivity, allowing a client to comment on the comment. *Id.* ¶ 232. For example, a client may be able to use comment area 1186 to view and/or add a stream of comments about a given cue point location. *Id.* Navigation area 1188 comprises any number of navigation controls for navigating, processing, manipulating, or otherwise affecting video elements. *Id.* ¶ 233. Navigation area 1188 may also comprise a set of cue point location identifier 1192 that graphically indicate the time positions associated with each cue point. *Id.*

2. Summary of Ahanger

Ahanger describes an advertising serving platform for dynamically inserting and delivering ads during playback of on-demand video media. Ex. 1008 ¶ 3. The platform includes an interface and mechanism for uploading content via any type and form of protocol. *Id.* ¶¶ 98–99. The platform further includes an interface to create, edit, modify, or otherwise manage any information and/or metadata associated with a media file or asset. *Id.* ¶ 104.

3. Summary of Badoiu

Badoiu describes a system and method for managing annotations in videos in a video hosting website. Ex. 1007 ¶ 6. A user can associate an

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annotation with spatial portions of a video frame, a particular moment in a video, or a scene of a video, and can submit the annotation within a video stored in the video hosting website. *Id.* Figure 8, reproduced below, illustrates a user interface for entering annotations.

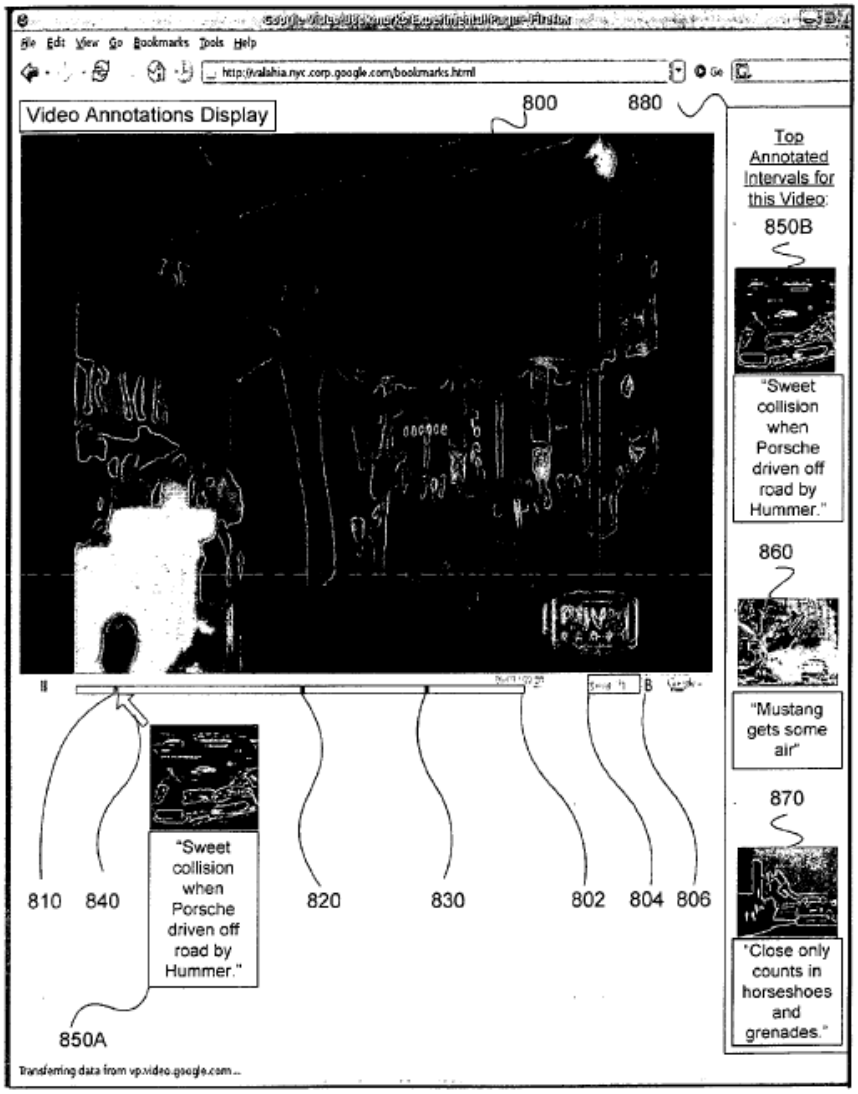


FIG. 8

Figure 8 above illustrates a user interface for entering annotations for intervals of video and viewing annotated clips of video. *Id.* ¶ 20. Each of the annotated clips shown on timeline 802, which corresponds to video 800, is associated with an annotated thumbnail. *Id.* ¶ 84. For example, when

cursor 840 is placed over the indication for annotated clip 810, annotated thumbnail 850 appears. *Id.* The user interface also allows the user to submit an annotation for an interval by clicking on "B" button 806. *Id.*

4. Summary of Geer

Geer describes a method and system for dynamic integration and non-linear presentation of advertising content with media content, such as digital media content, to achieve the effect of linking the advertisement with the context of the digital media content. Ex. 1005 ¶ 5. Figure 1, reproduced below, illustrates an example system.

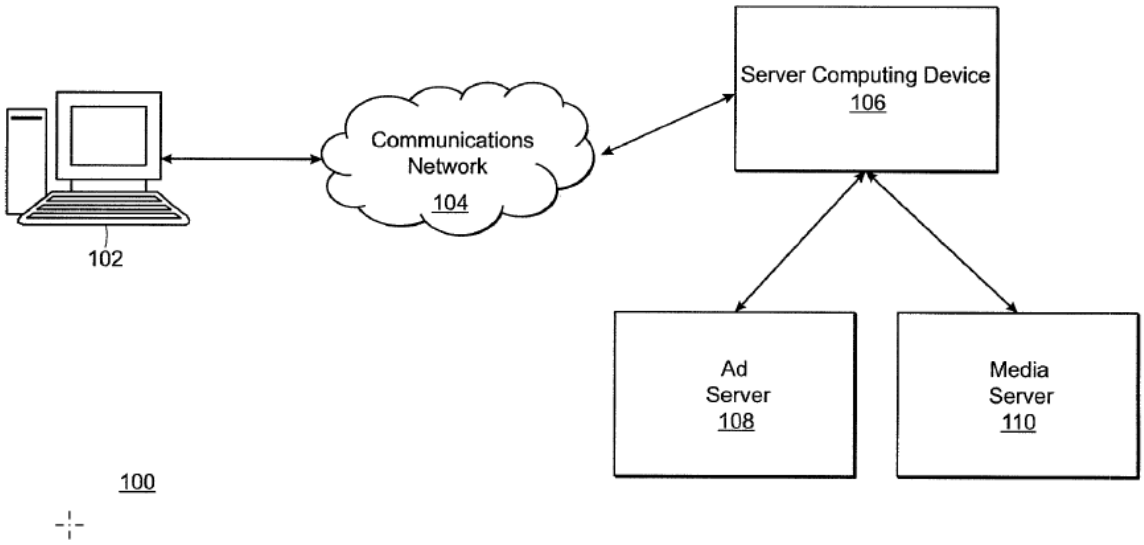


FIG. 1

Figure 1 is a block diagram of system 100 for dynamic integration of advertising and media content. *Id.* ¶ 24. System 100 includes client computing device 102, communications network 104, and server computing device 106. *Id.* Server computing device 106 is connected to one or more other computing devices which provide advertising content (e.g., ad server 108) and digital media content (e.g., media server 110). *Id.* A user interacts with system 100 by entering or navigating to an address of media content associated with server computing device 106. *Id.* ¶ 32. Upon receiving a

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request, server computing device 106 retrieves the requested media content (e.g., from media server 110). *Id.* Before transmitting the requested media content to computing device 102, server computing device 106 retrieves advertising content (e.g., from ad server 108). *Id.* In some embodiments, the advertising content is selected by server computing device 106 based on a marketing association between the owner of the advertising content and the producer of the requested video content. *Id.* Server computing device 106 combines the digital media content and the advertising content into interactive advertising unit 202 using a multi-layered approach. *Id.* ¶ 33.

Figures 3A, 3B, and 3C, reproduced below, are example screen shots of an interactive advertising unit provided by the system.

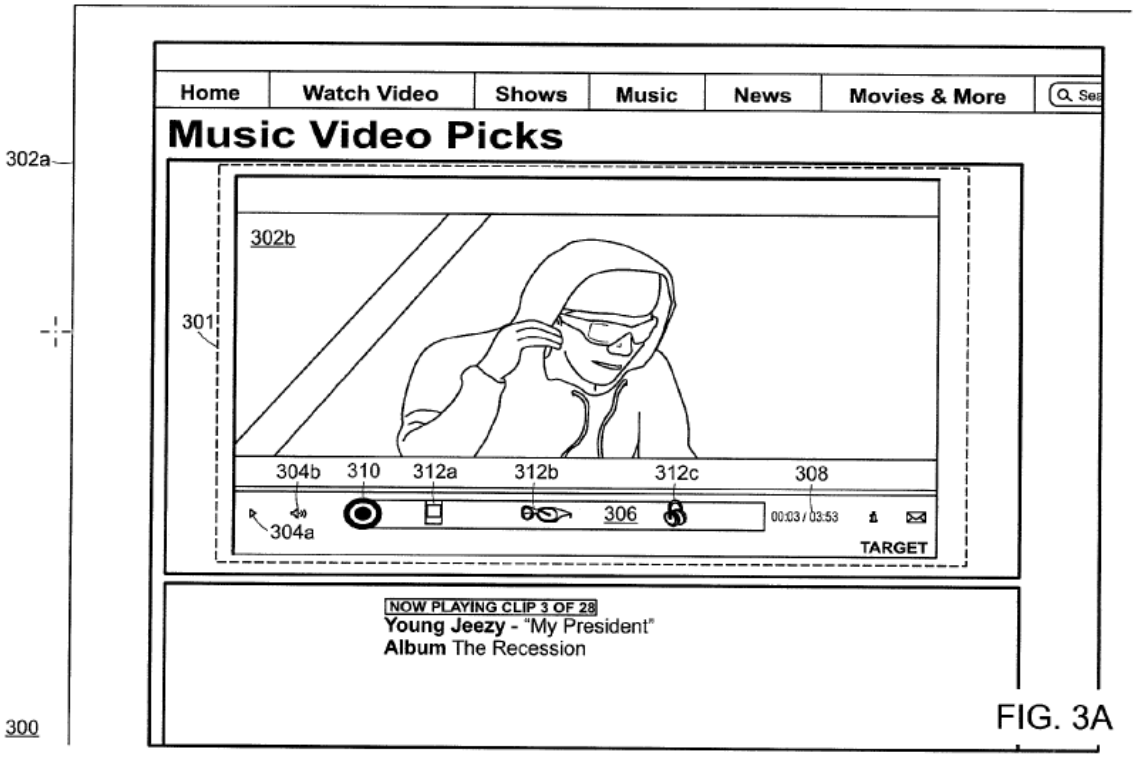


FIG. 3A

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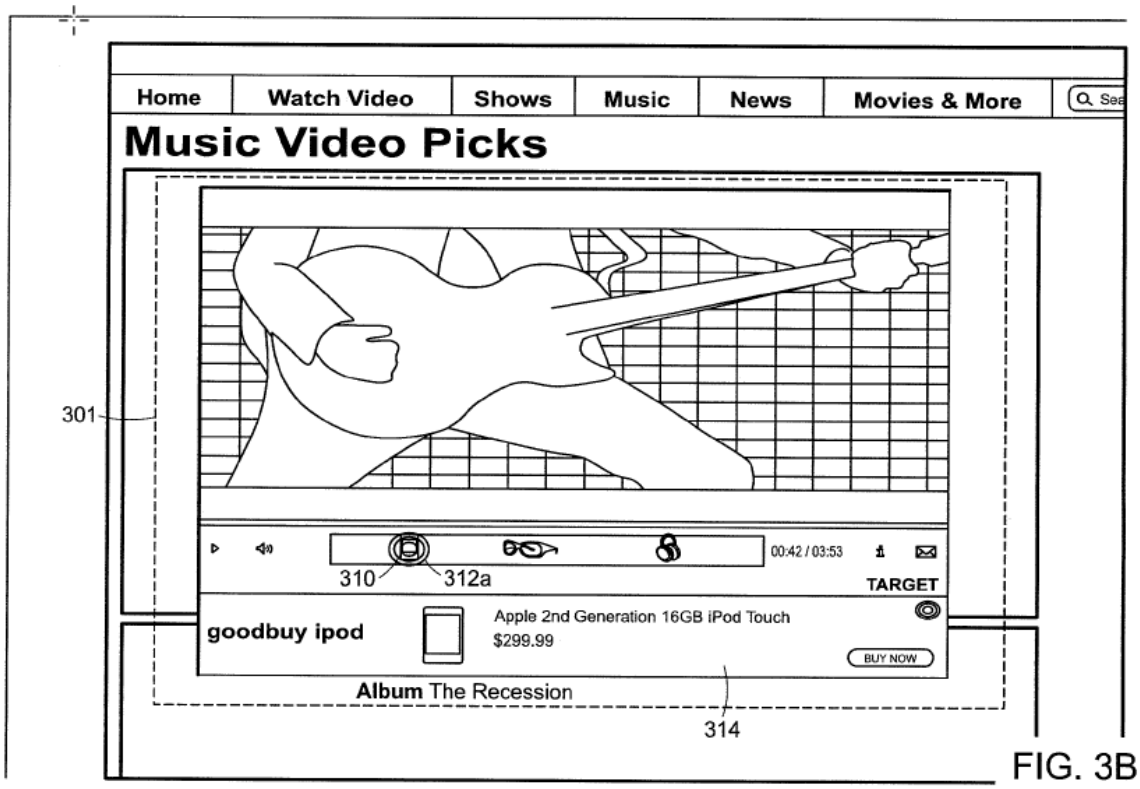


FIG. 3B

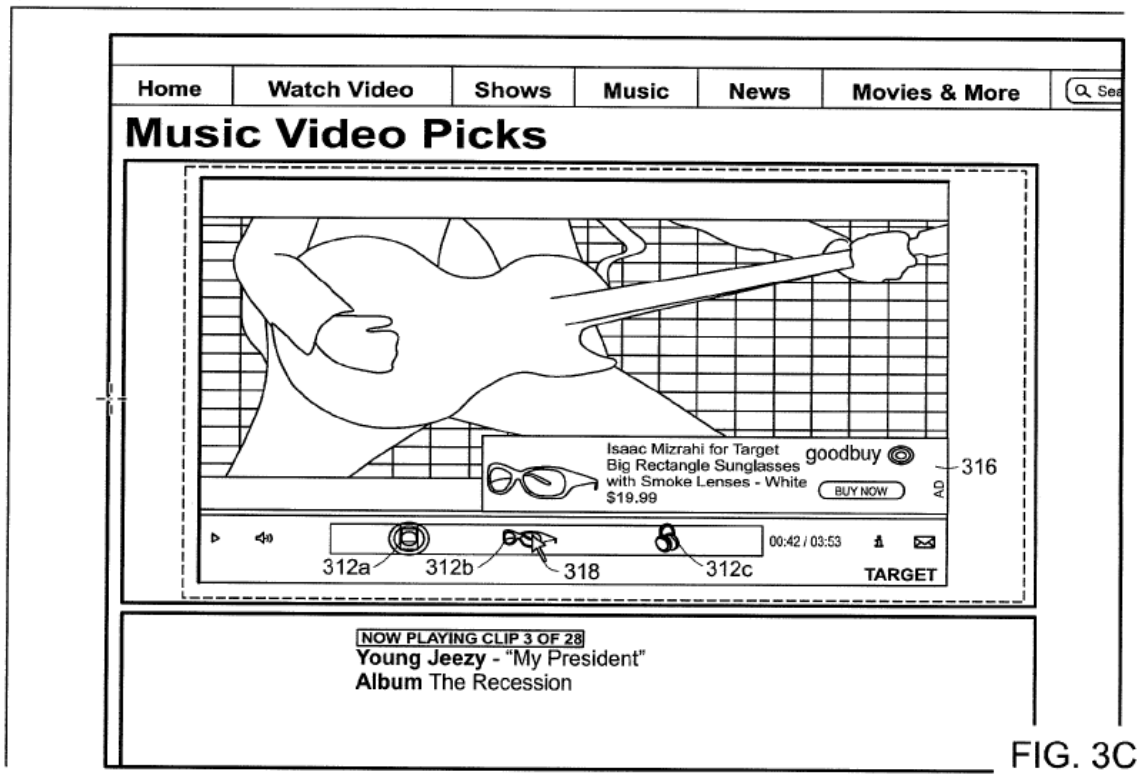


FIG. 3C

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Figures 3A, 3B, and 3C are screenshots of an interactive advertising unit (e.g., interactive advertising unit 301) provided by system 100. *Id.* ¶ 39. The advertising content includes interactive product icons 312a–312c integrated at various intervals in a scrubber bar 306 of a media player 302b. *Id.* The interactive advertising unit enables product icons 312a–312c to function within the context of media player window 302b and to trigger the display of advertisements associated with products represented by the icons 312a–312c. *Id.*

Also shown above, interactive advertising unit 301 includes a first content layer, which contains media player 302b for presenting the digital media content in browser window 302a. *Id.* ¶ 41. Interactive advertising unit 301 includes a second content layer above the first content layer, and places the advertising content within the second content layer. *Id.* ¶ 42. In this example, the second content layer covers the entire area of the first content layer, including media player window 302b and its features as the default media player controls (e.g., 304a–304b), scrubber bar 306, and elapsed time 308. *Id.* The interactive advertising unit positions product icons 312a–312c according to preferences exhibited by an advertiser, such as correlation with media content displayed at a specific point in time. *Id.* ¶ 43. In other embodiments, the interactive advertising unit positions product icons 312a–312c based on advertising content displayed to the user such that activation or triggering of product ions 312a–312c is synchronized with display of a certain advertising feature to the user. *Id.*

5. Summary of Fink

Fink describes a system and method for adding and displaying interactive annotations for online hosted videos, where a graphical annotation interface allows the creation of annotations and association of the

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annotations with a video. Ex. 1006 ¶ 4. Figure 1, reproduced below, illustrates an example system architecture.

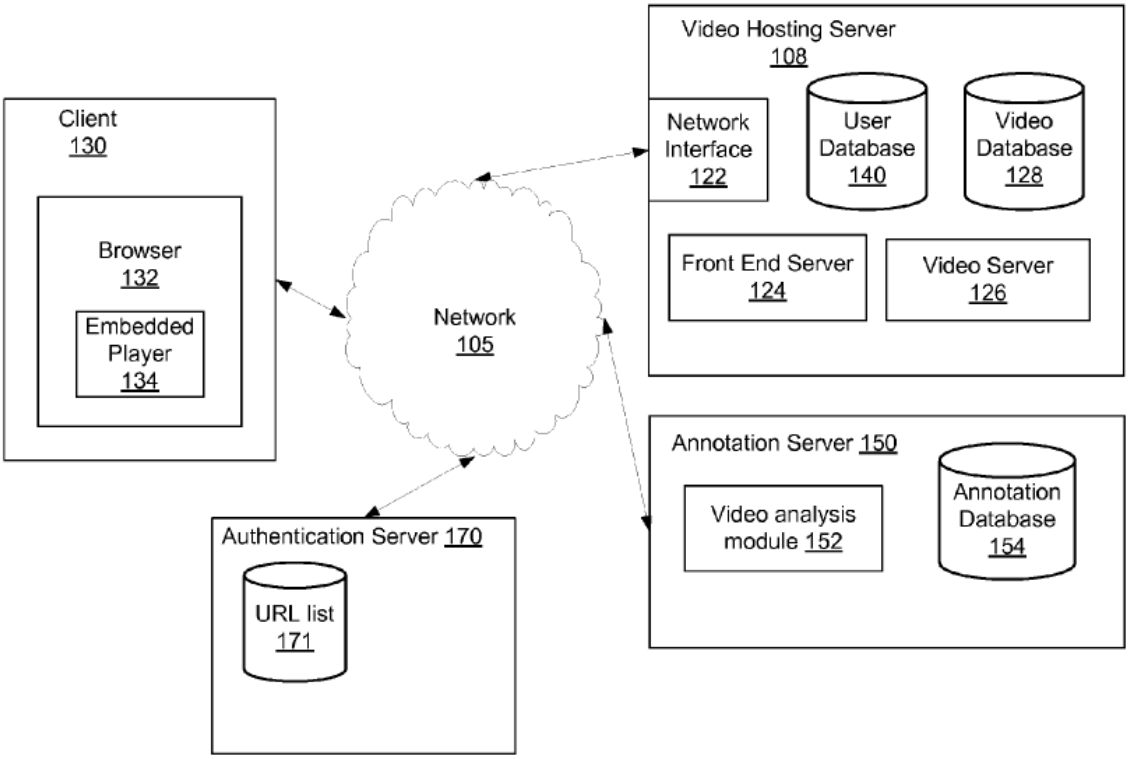


FIG. 1

Figure 1 above illustrates a block diagram of a system architecture. *Id.* As illustrated in Figure 1, video hosting server 108 includes front end server 124, video server 126, network interface 122, video database 128, and user database 140. *Id.* ¶ 13. Client 130 executes browser 132, and connects to front end server 124 via network 105. *Id.* ¶ 14. Video server 126 receives uploaded media content from content providers and allows content to be viewed by client 130. *Id.* ¶ 16. Annotation server 150 provides the ability to view and add annotations to videos in video database 128. *Id.* ¶ 22.

Figure 3, reproduced below, depicts a user interface for creating annotations.

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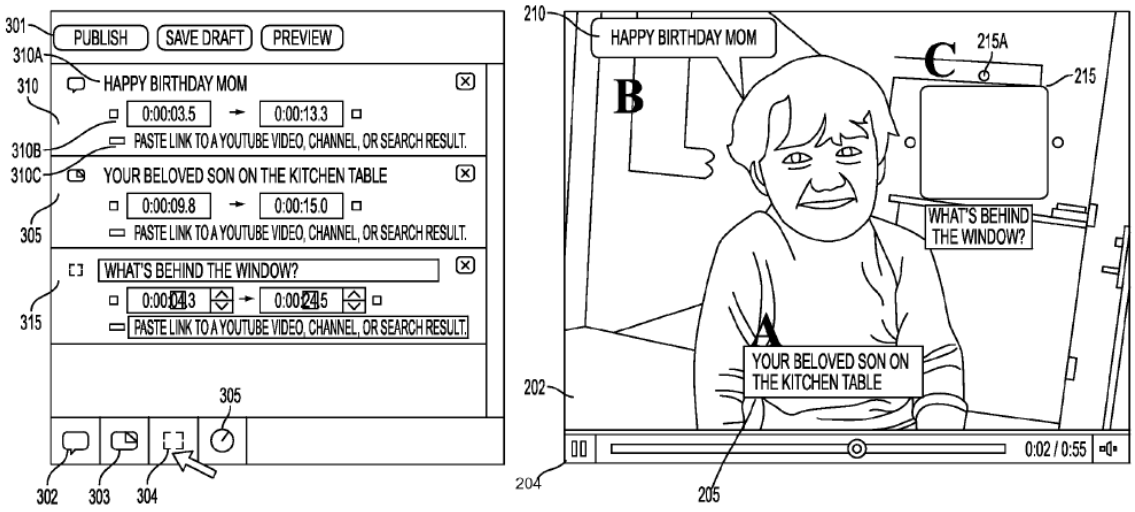


FIG. 3

Figure 3 above depicts a user interface for manually creating annotations. *Id.* ¶ 30. Main video area 202 displayed on client 130 plays a video stored in video database 128. *Id.* ¶ 26. Annotations 205 and 210 are text boxes and thought bubbles, which display static text. *Id.* Annotation 215 is a spotlight that displays text (e.g., "What's behind the window?") in response to a user hovering the mouse within its boundaries. *Id.* Annotation icons 302–305 correspond to four annotation types (speech bubbles, text boxes, spotlights, and pauses, respectively). *Id.* ¶ 30.

E. Anticipation by Sterner – Claims 9, 10, 14–17, 20, 21, and 24–26

Petitioner asserts claims 9, 10, 14–17, 20, 21, and 24–26 are anticipated by Sterner. Pet. 27–48. Patent Owner opposes. PO Resp. 10–19. Having considered the arguments and evidence before us, we find that Petitioner has demonstrated by a preponderance of the evidence that claims 9, 10, 14–17, 20, 21, and 24–26 are anticipated by Sterner.

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1. Claim 20

Based on the complete record, we are satisfied that Petitioner has demonstrated by a preponderance of the evidence that Sterner teaches each and every limitation of claim 20. *See* Pet. 27–38.

a) Limitations [20.1] and [20.2]

Claim 20 relates generally to a system that includes "at least one processing device" [20.1] and "a network interface configured to communicate over a network with a video data store" [20.2]. Ex. 1001, 47:54–57.

For these limitations, Petitioner contends that Sterner teaches a system for handling montage video data using cue point information. Pet. 27 (citing Ex. 1004 ¶¶ 12, 56, 76–79; Figs. 1A–1B; Ex. 1002 ¶¶ 75–76). Petitioner adds that Sterner includes at least one processing device in the form of application server 110, video server 112, and cue point server 114. *Id.* at 28 (citing Ex. 1004 ¶¶ 56–60, 67; Figs. 1A–1B; Ex. 1002 ¶¶ 77–78). According to Petitioner, video server 112, application server 110, and terminals 132, 134 communicate over a network via a network interface. *Id.* (citing Ex. 1004 ¶¶ 56–58, 60, 67 ("the server computers . . . may be in communication via any effective channel, including any type of wired or wireless, public or private network"), 72 (terminals 132, 134 communicating with application server 110 via network 130), 75–79).

Patent Owner does not present any arguments specific to these limitations. PO Resp. 10–19; Sur-reply 14–18.

We find that Sterner teaches a system and method for handling montage video data. Ex. 1004, code (54). Figure 1A, reproduced below, illustrates such a system.

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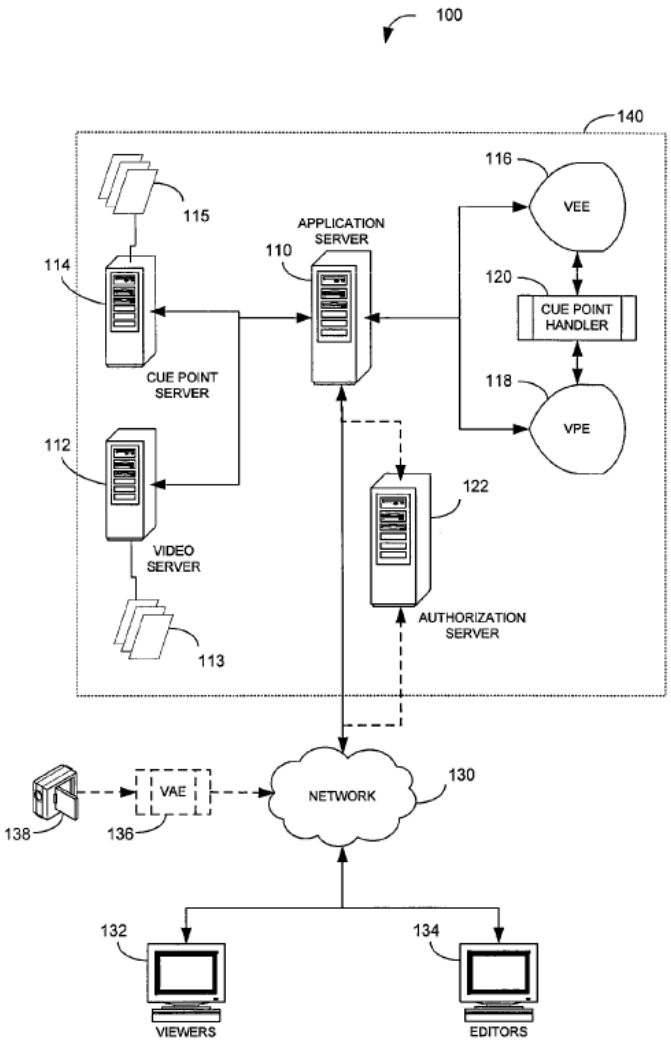


Fig. 1A

Figure 1A above illustrates a system for handling video cue points. *Id.* ¶ 56. In Figure 1A, system 100 comprises application server 110 configured to execute, and possibly store, one or more applications. *Id.* Application server 110 is in communication with one or more video servers 112, which stores and/or serves video files 113. *Id.* ¶ 57. Application server 110 also communicates to viewer terminal 132 and editor terminal 134 through network 130. *Id.* ¶ 67, Fig. 1A. Considering at least this disclosure, we find Petitioner's arguments persuasive and supported sufficiently on the complete

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record before us, and, therefore, we adopt them as our own findings with regard to these limitations.

b) Limitations [20.3], [20.4]. [20.5], [20.6], and [20.7]

Claim 20 further recites

> [20.3] non-transitory memory storing programmatic code that when executed by the at least one processing device, cause the system to perform operations comprising:
>
> [20.4] provide over a network, using the network interface, to a first user device a user interface that enables a user to associate, with respect to a given video, an image not from the given video and/or text with a user-specified position of the given video;
>
> [20.5] receive, over the network using the network interface, a first video;
>
> [20.6] receive, via the user interface that enables a user to associate an image not from the given video and/or text with a user-specified position of the given video, from the first user device an association of a first image and/or a first text with a first start position of the first video;
>
> [20.7] store the association of the first image and/or a first text with the first start position[.]

Ex. 1001, 47:58–48:1–8.

(1) Petitioner's Contentions

For these limitations, Petitioner argues that Sterner's servers perform the functions of storing and serving data, which would be understood to involve the execution of programmatic code stored in non-transitory memory. Pet. 30–31 (citing Ex. 1004 ¶¶ 56–60; Ex. 1002 ¶¶ 80–81). Additionally, Petitioner argues that editor terminal 134 (i.e., first user device) accesses Sterner's video editing environment (VEE) through a user interface over a network. *Id.* at 31 (citing Ex. 1004 ¶¶ 68–69, 72, 77, 90, 94–95, 152–156, Figs. 1A–1B). Petitioner asserts that Sterner's application

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server uses a network interface to provide VEE access over the network. *Id.* (citing Ex. 1004 ¶ 56). Petitioner argues also that the VEE user interface allows a client user to associate cue point information (e.g., textual, time, or aesthetic information) with a video. *Id.* at 31–33 (citing Ex. 1004 ¶¶ 61, 64, 128, 168–169, 178–179, 231, 261, Fig. 6). Petitioner further contends that cue point information includes an icon, which a POSITA would have understood is an image not from the given video. *Id.* at 33 (citing Ex. 1002 ¶¶ 82–85); Reply 13 (citing Pet. 32–33; Ex. 1002 ¶¶ 82–85).

Petitioner also contends that Sterner teaches that the VEE receives a first video over the network interface because Sterner indicates that video data may be uploaded from a client's computer to a video server. Pet. 33 (citing Ex. 1004 ¶¶ 93, 112, 114–115, 159, Fig. 3B (step 346 of "upload video file to server"); Ex. 1002 ¶ 86).

Petitioner adds that Sterner teaches an association of a first image and/or a first text with a first state position of a video from a first user device (e.g., editor terminal 134) through the interface. Pet. 33 (citing analysis for limitation [20.4]; Ex. 1004 ¶¶ 106–108, 145–146, 180, Fig. 7; Ex. 1002 ¶¶ 87–88). Petitioner adds that Sterner stores the cue points. *Id.* at 34 (citing Ex. 1004 ¶¶ 106–108, 129, 145–147, 180–184, Fig. 7; Ex. 1002 ¶ 89).

(2) Patent Owner's Contentions

Patent Owner does not present any arguments specific to limitations [20.3], [20.5], [20.6], and [20.7]. PO Resp. 16–19; Sur-reply 14–15. Patent Owner does, however, address limitation [20.4].

In this regard, Patent Owner contends that the Petition does not explain how Stern teaches "associate . . . an image not from the given video and/or text with a user-specified position of the given video." PO Resp. 11

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(citing Ex. 2089 ¶¶ 61–63). Patent Owner adds that the only disclosure that the Petition cites to for element [20.4] is that Sterner's cue point information can include an icon. *Id.* (citing Pet. 33; Ex. 1004 ¶ 128); Ex. 2089 ¶ 63. Patent Owner contends that "[t]he comment area of Sterner does not contain an 'icon'—the thing the Petitioner identifies as the claimed 'image not from the given video'—and the Petition does not assert that it does." Sur-reply 15.

(3) Discussion

We have reviewed Petitioner's arguments and evidence as to the undisputed limitations of [20.3], [20.5], [20.6], and [20.7], and find that Petitioner establishes sufficiently that Sterner discloses these limitations for the reasons provided by Petitioner. *See* Pet. 30 (citing Ex. 1004 ¶¶ 56–60), 32–35 (citing Ex. 1004 ¶¶ 93, 106–108, 112, 114–115, 129, 145–147, 159, 168, 180–184, 231, Fig. 3B, Fig. 7; Ex. 1002 ¶ 80–89). For example, we note that Sterner teaches application server 110 is configured with video editing environment 116 or a video playback environment 118. Ex. 1004 ¶ 68. Sterner teaches further that "[t]hese [VEE and VPE] programs *may be stored on the application server 110*, runnable (able to be executed, performed, effectuated, etc.) by the application server 110, or handled by the application server 110 in some other useful way." *Id.* (emphasis added). Sterner provides also that

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> system 100 may also comprise various types of client terminals, including viewer terminals 132 and editor terminals 134. *These terminals may comprise any device or application capable of accessing the system 100 in a useful way*. For example, viewer terminals 132 may include any device capable of playing video data from the VPE 118, like desktop computers, laptop computers, cell phones, personal digital assistants (PDA's), dedicated viewers, etc. *Editor terminals 134 may include any of these devices, as well*.

Id. ¶ 69 (emphases added); *see also id.* ¶ 72 ("Viewer terminals 132 and editor terminals 134 may communicate with the application server 110 via a network 130. The network 130 may be any public or private, wired or wireless network or set of networks.").

Sterner teaches further that cue point associations may be saved. *Id.* ¶ 107 ("Updating cue point associations 326 may comprise storing, modifying, removing, or otherwise processing information stored in relation to cue points, video files, or other data."); *see id.* ¶ 60 ("The application server 110 may also be in communication with one or more cue point servers 114, which may store and/or serve cue point information 115, or pointers to cue point information 115. In one example, the cue point server 112 may be a dedicated computer or network of computers with the capability to store and index sets of cue point information 115.").

In addition, we agree with Petitioner that Sterner teaches "an image not from the given video."[10] Sterner expressly discloses that a broad range

[10] We note that Patent Owner references claim construction arguments made by the defendants in the Consolidated EDTX Litigation. PO Resp. 12. There, the EDTX construed "an image not from the given video" to mean "an image from a source other than the given video." Ex. 2090, 12, *see* Ex. 1001, 47:63–64. Contrary to Patent Owner's representations, Petitioner is not a party in the Consolidated EDTX Litigation and, therefore, did not advocate any claim construction argument there. Ex. 2091, 5 (Listing

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of cue point information *may be* related to some or all of video files 113.

Ex. 1004 ¶ 61. Sterner instructs that

> [i]t will be appreciated that many types of cue point information may be possible, including *textual information (e.g. name, description, etc.*), time information (e.g. time position within the video file, time range associated with the video file, etc.), *aesthetic information (e.g. font size, font color, icon, associated image*, thumbnail information, etc.), hierarchical information (e.g. whether the cue point is the parent or child of another cue point), GUI information (e.g. cue point button size, physical location related to video frame, etc.), *or any other useful information*.

Id. ¶ 128 (emphases added). Relying on this disclosure, Petitioner's declarant, Dr. Porter, testifies that

> *Sterner also teaches that an image provided in the comment area may include an image not from the video*. Sterner teaches that the cue point information may include an "icon". *Id.*, ¶[0128]. A POSITA would have understood that an "icon" is a graphical image used to represent certain data or computer operations. *Even when such data is a video, a POSITA would have understood that an associated "icon" would generally not have been formed based on an image from the video*.

Ex. 1002 ¶ 85 (emphases added). Dr. Porter explains that an icon is a graphical "image" that would not have been from a given video. *Id.*

Although neither Patent Owner nor Dr. Valerdi disputes that an icon can be an image, Patent Owner contends that the Petition does not establish that Sterner teaches images not from a given video. *See* PO Resp. 16–19.

Defendants All 4 Heath SRL, Oanasun Entertainment SRL, 9090-7247 Québec Inc., dba KB Productions, Bravomax Services Limited, Manica Media SL, and Boutique Media Pty Ltd.); *see* PO Resp. 12. Nonetheless, we determine that the issue here does not turn on a claim construction dispute between the parties regarding the meaning of "an image not from the given video." Rather, the parties dispute whether Sterner discloses an image from a source other than the given video.

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For example, Dr. Valerdi testifies that "Sterner does not describe these "images" as being from a source other than the given video. Ex. 2089 ¶ 63. Yet, as discussed above, we find that the express disclosure in Sterner (e.g., Ex. 1004 ¶ 128) supports Dr. Porter's testimony that icons are not limited to images from a given video, especially in light of Sterner's teaching that there are "many types of cue point information." *See* Ex. 1002 ¶¶ 85, 128. Moreover, we observe that Patent Owner's expert, Dr. Valerdi, agrees that cue points can be images or text that function as tags. The exchange during his cross-examination is provided below:

> Q: Okay. In what context would a cue point be a tag?
>
> A: *I think if there's, you know, a clear intent to mark a video with an image and text*, I think it would make sense to call it a tag in that context.

Ex. 1033, 104: 17–105:1 (emphasis added). In this regard, Dr. Valerdi's testimony supports the notion that cue point information can be images, which Sterner teaches can be any useful information like icons. Thus, based on the complete record, we find that Dr. Porter's testimony is consistent with and supported by Sterner's broader disclosure that "many types of cue point information may be possible," such as an icon that may be an image not from a given video. Ex. 1004 ¶ 128; Ex. 1002 ¶ 85 ("A POSITA would have understood that an 'icon' is a graphical image used to represent certain data or computer operations.").

Additionally, we note Sterner teaches that cue point information may be associated with video files at editor terminal 134 (i.e., first user device). For example, Sterner teaches that a client user may enter a cue point edit mode and then provide cue point data. Ex. 1004 ¶¶ 106, 161, 163 ("Clients may have the same or different authorization within the VEE to add, modify,

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and/or delete cue point information."). Further, Sterner's Figure 6, which shows a VEE, is provided below. *Id.* ¶ 36.

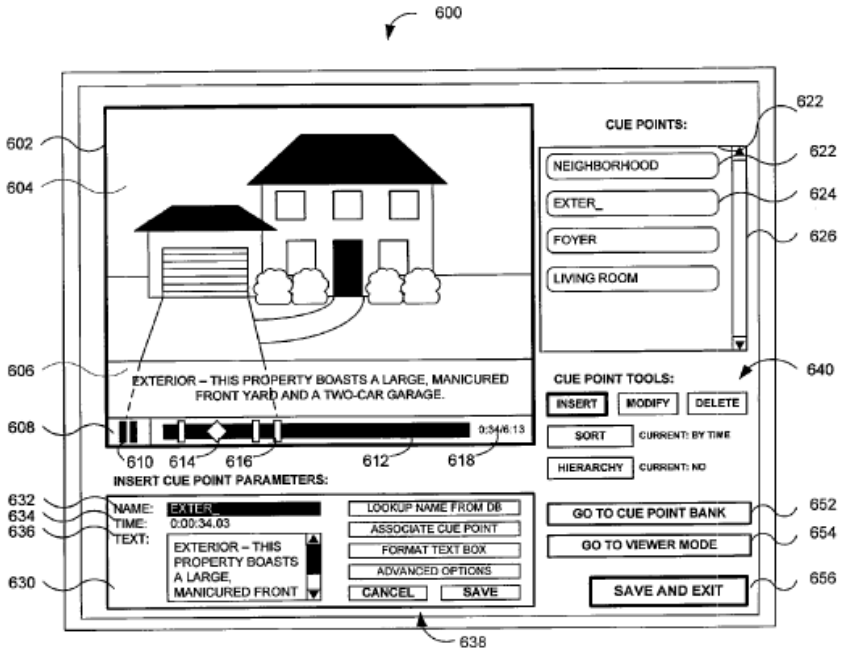


Fig. 6

Figure 6 provides a screen shot of a VEE viewed from a client terminal. *Id.* As shown in Figure 6, cue point editor screen 600 provides video frame 602 that displays video data and "allow[s] for interactive video manipulation." *Id.* ¶ 167. "[V]ideo frame 602 may comprise a video footage area 604, a comment area 606, a navigation area 608, and any other useful areas." *Id.* Sterner further teaches that "comment area 606 may display text, images, videos, or other information describing or adding to the footage seen in the video footage area 604." *Id.* ¶ 168. Additionally, video progress bar 612 may include cue point location indicators 616. *Id.* ¶ 170.

Sterner also teaches that "cue points may refer to indexed time positions or tags anywhere within a video file . . . multiple cue points may refer to multiple time positions within a video file." *Id.*; *see also id.* ¶ 62 ("[C]ue points may point to a specific number of bits of digital video data

from the beginning or end of a video file, or from some other cue point location."), ¶ 63 ("[C]ue points may be video meta-tags" that "describe the information in the video file, rather than pointing to specific data locations within the file."), ¶ 64 (cue points may refer to "a start or end time position of a particular video event. In other embodiments, a cue point may have a beginning and end. The end of the cue point may be determined or set in any useful way"). We find that these teachings support Petitioner's argument that Sterner teaches association of an image, e.g., cue point information, with a user-specified position or a first start position of a video.

Having considered the parties' arguments and evidence, we find Petitioner's arguments persuasive and supported sufficiently on the complete record before us regarding these limitations.

c) Limitation [20.8]

Claim 20 further recites that the non-transitory memory storing programmatic code causes the system to

> [20.8] cause the first image and/or the first text to be presented at the first start position, during playback of the of the first video, in or adjacent to a playback area of a video player via a second user device[.]

Ex. 1001, 48:10–12.

Petitioner contends Sterner's viewer terminal 132 (i.e., second user device) accesses the application server to execute a video playback environment, VPE, that plays a video with corresponding cue point information. Pet. 34 (citing Ex. 1004 ¶¶ 56, 68–69, 72, 77, 185, 190–191, 205–210 (client entering VPE by "accessing a webpage"), Figs. 9A–9B, 10). To support its position, Petitioner provides annotated Sterner Figure 11C, which is reproduced below:

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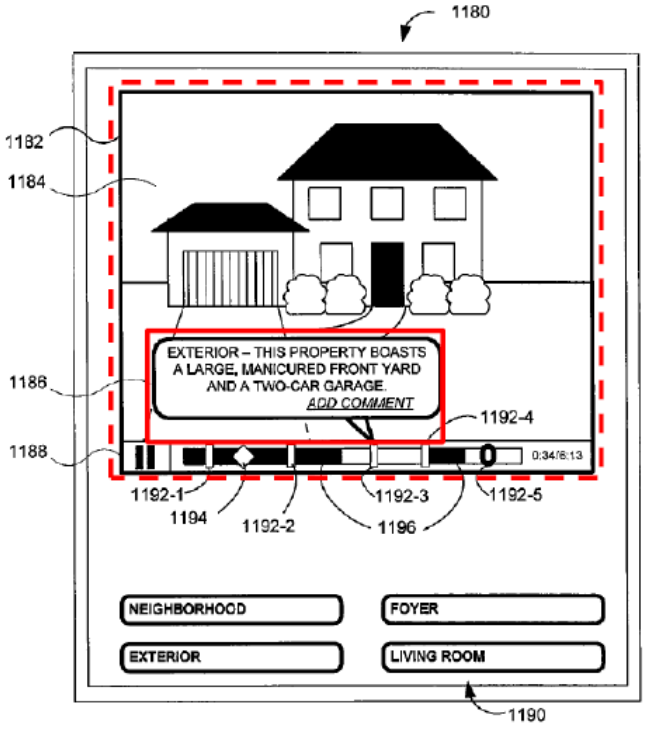


Fig. 11C

Petitioner's annotated Figure 11C shows red solid and hatch lines added to the original in Sterner. Petitioner explains that the comment area is annotated in solid red lines and the playback area is annotated in red hatched lines. *Id.* at 37 (citing Ex. 1002 ¶¶ 90–92).

Referring to annotated Figure 11C, Petitioner asserts that during video playback, the VPE causes the first image/text (i.e., cue point information) to be presented at particular time points. *Id.* at 34–35 (citing Ex. 1004 ¶¶ 214, 231). Petitioner argues that the VPE displays navigation area 1188 that causes cue point information (e.g., comments in comment area 1186) to be presented at a particular spatial location within the video player relative to navigation area 1188. *Id.* at 35–36 (citing Ex. 1004 ¶¶ 214, 231, 233 ("[N]avigation area 1188 may comprise a set of cue point location identifiers 1192 . . . [which] graphically indicate the time positions associated with each

cue point. . . . [C]ue point location identifiers 1192-1 through 1192-4 represent time positions of cue points added through a VEE by a client editor"), Fig. 11C).

Patent Owner does not present any arguments specific to these limitations. PO Resp. 16–19; Sur-reply 14–18.

Based on the complete record, we determine Petitioner's arguments are consistent with and supported by Sterner's disclosure. We observe that Sterner teaches "FIG. 11C provides . . . [a] screen shot of . . . a video playback environment as viewed by a client terminal according to the invention." Ex. 1004 ¶ 230. "[V]ideo playback screen 1180 . . . may be useful for viewing, navigating, processing, manipulating, and performing other functions relating to video and associated information." *Id.* Further, video playback screen 1180 comprises video frame 1182 that displays video data and includes video footage area 1184, comment area 1186, navigation area 1188, "and any other useful areas." *Id.*

With respect to comments, Sterner provides that

> *comment area 1186 may display text, images, video, or other information describing or adding to the footage seen in the video footage area 1184*. Further, the comment area 1186 may have any useful aesthetic or functional characteristics, including any size, shape, color, transparency, or other useful characteristic. As illustrated, the comment area 1186 may be a "pop-up" field which appears in any part of the video playback screen 1180 for any desirable reason . . . *[T]he comment area 1186 may appear when a client interacts with a cue point location identifier 1192*. For example, the client may cause the comment area 1186 to appear by mousing over (e.g. placing the mouse pointer over), right-clicking, selecting, or otherwise interacting with a cue point location identifier 1192. *In other embodiments, the comment area 1186 may appear whenever a cue point location is reached*.

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Ex. 1004 ¶¶ 231, 233 (emphases added). Accordingly, based on the complete record, we agree with Petitioner's arguments regarding this limitation.

d) Limitation [20.9]

Claim 20 further requires that the non-transitory memory storing programmatic code causes the system to

> [20.9] enable a corresponding navigation event to occur at least partly in response to a user selecting: the first image and/or the first text during a playback of the first video, wherein the first image and/or the first text is presented in or adjacent to the playback area.

Ex. 1001, 48:13–19.

(1) Petitioner's Contentions

Petitioner asserts that Sterner describes a presented first image/text (e.g., comment) that "may respon[d] to interaction by a client" and that may be "selectable" during video playback. Pet. 37 (citing Ex. 1004 ¶ 169). As asserted by Petitioner, Sterner further describes that the first image/text may include "interactive elements, like hyperlinks or GUI elements" which, when selected, enable "navigat[ion] to a different location" or "open[ing] the information into a new frame." Pet. 37–38 (citing Ex. 1004 ¶ 169). According to Petitioner, since the comment area is displayed during video playback for a particular duration, this selection occurs during such duration and thus during video playback. Pet. 38 (citing Ex. 1004 ¶ 231). As contended by Petitioner, the first image/text is presented in or adjacent to the video player playback area. Pet. 34–38 (citing Ex. 1004 ¶¶ 214, 231, 233, Fig. 11C).

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(2) Patent Owner's Contentions

Patent Owner argues that Sterner does not disclose a system that enables a user to associate a navigation-enabled first image and/or first text with a video. *See* PO Resp. 12–19. According to Patent Owner, Sterner's paragraph 169 "makes clear that a user can select text appearing in comment area 606 in order to copy it to another file or, perhaps, to highlight the text." *Id.* at 13 (citing Ex. 2089 ¶¶ 61–63); *see also* Sur-reply 16 ("[T]hat the text in the comment area may be 'able to be copied to a text file,' would not suggest that the text can cause a navigation event.") (citing Ex. 1004 ¶ 169; Ex. 2089 ¶ 60). Patent Owner adds that paragraph 169 merely teaches that hyperlinks or GUI elements can be included in comment area 606 in addition to, or instead of, the first image and/or first text that was received from a first user device. *Id.* at 14; Sur-reply 16. According to Patent Owner, paragraph 169 of Sterner does not disclose that the first image and/or first text, which a user must have previously associated with a first video, can themselves be selected to enable a navigation element, as required by the claim. *Id.*

Patent Owner further asserts

> "GUI elements" is a term of art that would not be understood by a POSITA to include an image. *See* Valerdi Declaration, Exhibit 2089 at ¶64. In fact, the Petition makes no citation to Sterner disclosing an image as required by the claim in a comment area at all.

PO Resp. 15 (citing Ex. 2080 ¶ 63; Pet. 31–38). Patent Owner adds that Sterner discusses the types of information that can be contained in a "cue point" structure, and that list does not include hyperlinks or any other tool that is navigation-enabled. *Id.* (citing Ex. 1004 ¶ 128); Sur-reply 17.

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Patent Owner also argues that Sterner does not disclose enabling a "navigation event." PO Resp. 15–16; Sur-reply 17. Patent Owner contends that a "navigation event" requires more than a link to another webpage via hyperlinks (such as HTTP links or URLs), but also a 'jump to the corresponding item review' in a video." *Id.* at 15 (citing Ex. 1001, 29:1–4); *see also* Ex. 2089 ¶¶ 66–67. Patent Owner asserts that Sterner's paragraph 128 does not include hyperlinks or any other tool that is navigation-enabled. *Id.* (citing Ex. 1004 ¶ 128).

Patent Owner argues additionally that Sterner does not teach displaying or otherwise including hyperlinks "during a playback of the first video" via the "second user device." PO Resp. 17 (citing Ex. 2089 ¶¶ 68–69). Patent Owner asserts that the hyperlink functionality described by Sterner and cited by the Petition only occurs VEE, not in VPE. *Id.* (citing Ex. 2089 ¶ 68). Thus, as argued by Patent Owner, the Petition's mapping of Sterner to claim 20 improperly conflates these two different video environments. *Id.* at 18 (citing Ex. 2089 ¶¶ 68–69; Ex. 1004 ¶¶ 68, 94–96, 128, 185–239, Figs. 3–4); Sur-reply 17–18.

(3) Discussion

Consistent with Petitioner's arguments, we find that Sterner discloses a VEE including cue point editor screen 600 that further comprises video frame 602 configured to display video data, where the video frame includes comment area 606. Ex. 1004 ¶ 169. Sterner further teaches that comment area 606 may appear on the screen when a client places a mouse pointer over cue point location indicator 616. *Id.* Additionally, Sterner provides that

> [i]n other examples, the text information in or associated with the comment area 606 may be *indexable, searchable, or selectable (e.g. able to be copied to a text file)*; *it may be related to video data*, *cue point information*, or user data.

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Id. (emphasis added). Further, Sterner teaches that the information in comment area 606 may include interactive elements, like hyperlinks or GUI elements. *Id.*

Based on this disclosure, we do not read Sterner so narrowly as to restrict the information in comment area 606 to selection only by copying text information to a text file. Sterner itself does not teach that the selection of text must be done only by copying the text. Indeed, Sterner expressly uses "e.g.," which indicates that the copying of text, is one example of how the text information may be selected, indexed, or searched. Ex. 1004 ¶ 169. Moreover, Sterner teaches that comment area 606 includes interactive elements like hyperlinks or GUI elements, which allow the client to, among other things, navigate to a different location. *Id.* This described functionality of comment area 606 is at odds with Patent Owner's suggestion that selection can occur solely by copying text. *See* PO Resp. 13.

Additionally, we disagree with Patent Owner's position that Sterner only teaches that hyperlinks or GUI elements can be included in comment area 606 in addition to, or instead of, the first image and/or first text that was received from a first user device. *See* PO Resp. 14; Sur-reply 16. Sterner teaches that "comment area 606 may display text, images, videos, or other information describing or adding to the footage seen in the video footage area 604." Ex. 1004 ¶ 168. In the next paragraph, Sterner expressly states that the information in comment area 606 includes GUI elements or hyperlinks that may be related to cue point information. *Id.* ¶ 169. Consistent with this disclosure, we observe once more that Sterner teaches that cue point information includes "any useful information" such as icons, associated images, text, and GUI information. *Id.* ¶¶ 128, 169. Thus, taken as a whole, we do not read Sterner to teach that comment area 606 includes

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information in addition to or instead of the cue point information (e.g., associated icon). Rather, Sterner explicitly teaches that the comment area information may be related to cue point information and this information includes interactive hyperlinks and GUI elements. *See id*. ¶ 169.

Specifically with regard to GUI, we further find that Sterner teaches explicitly that GUI elements "may comprise *any graphical, textual, audio, or other data which is desirable or necessary for providing interface capabilities to a client*." Ex. 1004 ¶ 190 (emphases added). Sterner explains that "the GUI does not require any graphical interface elements . . . [and that] it may be possible to *create an interface* which uses only text, sound, or *some other interface capability*." *Id.* (emphases added). We observe this disclosure contradicts Dr. Valerdi's testimony that

> a POSITA would not have understood "GUI elements" to refer to the images in a comment area that the Petition cited for element [20.4]. A POSITA would have understood "GUI elements" to include elements such as check boxes, drop lists, buttons, or text boxes. A POSITA would not have understood "GUI elements" to include selectable images.

See Ex. 2089 ¶ 64. This is because Dr. Valerdi attempts to exclude images from Sterner's GUI elements, whereas Sterner itself does not do so. *See* Ex. 1004 ¶ 190 (teaching that GUI "may comprise any *graphical*, textual, audio, or *other data* which is desirable or necessary for providing interface capabilities to a client") (emphases added). Moreover, during his cross-examination, Dr. Valerdi acknowledged that icons may be used as selectable GUI buttons depending on the context and program. Ex. 1033, 99:20–100:6; *see also* Ex. 1037 at 239, 242. As such, Dr. Valerdi's cross-examination testimony supports our determination that Sterner's comment area

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information, in the form of icons or hyperlinks/GUI elements, are selectable images and texts. *See id.*

In addition, we are persuaded that this information is selectable to enable a "navigation event," as required by claim 20. Patent Owner argues that Sterner does not disclose enabling a "navigation event" because a "navigation event" requires more than a link to another webpage via hyperlinks (such as HTTP links or URLs), but also a 'jump to the corresponding item review' in a video." PO Resp. 15–16 (citing Ex. 1001, 29:1–4); Sur-reply 17; *see also* Ex. 2089 ¶¶ 66–67.

> But Sterner teaches exactly that. Sterner discloses that
>
> the comment area 606 may comprise interactive elements, like hyperlinks or GUI elements, which allow the client to interact with the comment area 606 (e.g. to *navigate to a different location, to open the information into a new frame, to acquire related information* (like other users' comments about the comment), etc.).

Ex. 1004 ¶ 169 (emphasis added). Further, Sterner teaches that the comment area includes text information that is "selectable" and related to cue point information. *Id*. And, Sterner teaches that cue point information may be related to "specific time positions within a video file." *Id.* ¶ 117.

We also discern that Sterner discloses that the VPE includes video playback screen 1180, video frame 1182, video footage area 1184, and comment area 1186. Ex. 1004 ¶ 230. Sterner describes that comment area 1186 may display text, images, video, or other information describing or adding to footage seen in video footage area 1184. *Id.* ¶ 231. We observe that Sterner's Figure 8 provides a flow diagram summarizing methods relating to VPE. *Id.* ¶ 38. Referring to Figure 8, Sterner teaches that

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> the video frame may comprise a field spanning a lower portion of the frame in which text information may appear (e.g. subtitles, captions, or comments). This field may be independently controllable or editable, for example to take up the lower fifth of the frame, to have a thirty-percent translucent grey background with black text, etc. The field may display text, images, videos, or other information describing or adding to the footage seen in the video frame. Additionally, *the field may respond to interaction by a client or other function* . . . . [T]he field may comprise *interactive elements, like hyperlinks or GUI elements, which allow the client to interact with the field (e.g. to navigate to a different location, to open the information into a new frame, to acquire related information (like other users' comments about the comment)*, etc.).

Ex. 1004 ¶ 196 (emphases added).

Further, Petitioner's expert, Dr. Porter, explains that Sterner teaches cue point location identifiers 1192-1 through 1192-4 (shown in Sterner's Figure 11C) represent time positions of cue points added through a VEE by a client editor. Ex. 1002 ¶ 91 (quoting Ex. 1004 ¶ 233). We understand Dr. Porter to testify that the cue point information added through VEE by a client editor (i.e., in the comment area) appears during playback via VPE. This testimony is consistent with Sterner's teaching that cue point information is stored and associated with video file/data. Ex. 1004 ¶ 60 ("The application server 110 may also be in communication with one or more cue point servers 114, which may store and/or serve cue point information 115, or pointers to cue point information 115."), ¶ 101 ("[T]he video data may be associated with a set of cue point data relating to a set of cue points."), ¶ 185. Additionally, Sterner explicitly teaches that the comment area in the VPE may include *interactive elements, like hyperlinks or GUI elements* related to cue point information. *Id.* ¶ 196. As such, we

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find that Sterner teaches that hyperlinks or interactive elements may be present in the comment area in both the VEE and VPE.

Thus, based on the complete record, we find Petitioner's arguments persuasive and supported sufficiently on the complete record before us regarding these limitations.

e) Conclusion

For the reasons discussed above, we find Petitioner has demonstrated by a preponderance of evidence that Sterner teaches all the limitations of claim 20. Accordingly, Petitioner has demonstrated that claim 20 is anticipated by Sterner.

2. Claim 9

For claim 9, Petitioner relies on many of the same arguments discussed for similar limitations recited in claim 20. Pet. 38–41. With respect to the limitations in claim 9 that differ from the limitations in claim 20, Petitioner adds that claim 9 recites "first start time" instead of "first start position" and that Sterner also describes the cue point's start "time position" as a start time. Pet. 39–40 (citing Ex. 1004 ¶¶ 61, 64, 178, 231). Petitioner adds that Sterner also describes defining and storing multiple cue points (i.e., multiple associations of images/text with respective start times). Pet. 39–40 (citing Ex. 1004 ¶¶ 105–106, 129, 145–147, 180–184, 233–236; Figs. 7, 11C). Petitioner further asserts that Sterner also describes that during video playback, each of the comment areas is presented in the same manner as one another. Pet. 40–41 (citing Ex. 1004 ¶¶ 230–236; Fig. 11C).

Patent Owner does not present arguments for claim 9 separately from those discussed for claim 20. PO Resp. 19–20.

We have reviewed Petitioner's contentions and supporting evidence regarding claim 9. *See* Pet. 38–41. For the same reasons discussed above,

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we find Petitioner's arguments persuasive and supported sufficiently on the complete record before us, and, therefore, we adopt them as our own findings. Accordingly, we find that Petitioner has demonstrated by a preponderance of evidence that Sterner teaches all the limitations of claim 9.

3. Claims 10 and 21

Claim 10 depends from claim 9, and claim 21 depends from claim 20. Both further recite "wherein the video player is configured to display a plurality of images selected by a respective plurality of users, the plurality of images corresponding to respective segments included in a given video." Ex. 1001, 46:49–53, 48:20–24.

For these dependent claims, Patent Owner relies on the arguments and evidence discussed with respect to claims 9 and 20. PO Resp. 20. In addition, Patent Owner argues that these limitations require that "at least two distinct users must be able to select at least two images **for the <u>same</u> video** that correspond to segments of that video." *Id.* at 21 (citing Ex. 2089 ¶ 71). Patent Owner contends that the eight paragraphs in Sterner relied upon in the Petition do not teach these features. *Id.* (citing Pet. 42); *see also* Sur-Reply 18 ("Sterner does not disclose that a plurality of users can select the plurality of files to be displayed in the video player. Ex. 2089 at ¶71. The fact that multiple separate cue points can be created is of no moment, because each cue point is selected by only a single user, not two or more users as required by the claim.").

Petitioner responds that "Sterner's VEE authorizes cue point creation/modification based on individual clients and video files." Reply 17 (citing Ex. 1004 ¶¶ 84, 87, 92, 112). Petitioner adds that Sterner teaches multiple users creating cue points (corresponding to different video segments) in a single video. *Id.* at 17–18 (citing Ex. 1004 ¶ 233, Fig. 11C;

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Ex. 1033 115:10–22). And, Petitioner contends that Sterner's cue point creation involves associating an image with the cue point. *Id.* at 18 (citing Ex. 1004 ¶¶ 64, 128, 231).

We discern first that, consistent with Petitioner's position, Sterner contemplates the use of its system by multiple clients. For example, referring to Figure 2, Sterner teaches a method for determining a client's access to video environments. Ex. 1004 ¶ 82. According to Sterner, access begins by requesting login or client information from the party requesting access to the video environment or application (the client). *Id.* The client may provide information like a login identifier and a password, or any other desired or required information for determining the client's level of authorization. *Id.* ¶ 83. In addition, Sterner teaches that

> it will be appreciated that many other client types may be desirable for different environments. For example, it may be desirable to determine whether the client is an advanced or novice client, whether the client is bound by certain contractual obligations, whether the client's use falls within certain payment plans, etc. Further, of course, the client may be a different type of client depending on the file or files to which she is attempting access. For example, the client may be an editor for all files which she uploaded to the system, a viewer to all files uploaded by others and marked as public, and neither a viewer nor an editor for any files marked private or not yet published.

Ex. 1004 ¶ 87. Sterner's disclosure of multiple types of clients supports Petitioner's position that Sterner teaches "a respective plurality of users" that may access the video files in Sterner's system.

Furthermore, Sterner teaches that the clients can access existing files in the VEE. Ex. 1004 ¶ 92 ("[I]t may be desirable to open access to the VEE, but limit access to certain files. . . . [I]t may be necessary as part of processing the login 302 to acquire information from the client regarding

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which files the client intends to access."). Sterner provides that "[i]f the client does have permission 304-2 to access the VEE or the desired files, the method 300 may continue to load the VEE 310." *Id.* Additionally, Sterner expressly teaches that "[o]nce the VEE is loaded 310, *the method 300 may determine whether the client is attempting to use a new or existing video 312* . . . [and] [i]f the client is attempting to use an existing video 312-2, *the method 300 may acquire the existing video information 314-2 from wherever it is stored, for example from a video server*." *Id.* ¶ 93 (emphases added). Thus, based this disclosure, we agree that Sterner describes multiple clients accessing existing video files through the VEE. *Id.*

Once the VEE has been initiated, Sterner further teaches that multiple clients may be able to add, modify, delete, or otherwise edit the cue point information. "Any or all cue point information may be entered for new cue points and or for modifying existing cue points." *Id.* ¶ 106. Sterner expressly teaches that "[c]lients may have the same or different authorization within the VEE to *add, modify, and/or delete cue point information*." *Id.* (emphasis added).

Subsequently, in paragraph 233, Sterner teaches that during playback, the navigation area may include a set of cue point location identifiers 1192 (referring to Figure 11C). *Id.* ¶ 233. Sterner further discloses that identifiers 1192-1 through 1192-4 represent time positions of cue points added through a VEE by a client editor, whereas identifier 1192-5 represents a cue point added in VPE by the same or another client. *Id.* This disclosure of the VPE is consistent with Sterner's overall disclosure that multiple client editors can access an existing video file to add cue points that are then played in VPE.

On the whole, we find that Sterner teaches that the video player is configured to display a plurality of images (e.g., cue point information such

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as icons) selected by a respective plurality of users (e.g., different clients), and that the plurality of images (e.g., cue point information) corresponding to respective segments included in a given video (e.g., time positions). Our reading of Sterner is further supported with Dr. Valerdi's cross-examination testimony. There, Dr. Valerdi acknowledges that Sterner's paragraph 233 teaches multiple cue points 1192-1 through 1192-4 added by a client in VEE and another cue point added by another client. Ex. 1033, 115:10–22.

Accordingly, we determine that Petitioner has demonstrated by a preponderance of evidence that Sterner teaches all the limitations of claims 10 and 21.

4. Claims 15 and 25

Claim 15 depends from claim 9 and further requires that the "video player is configured to: display the first image and/or the first text, and the second image and/or the second text, in a scrubber area, the scrubber area comprising a slider tool that enables a user to scrub forwards through the first video by dragging the slider tool." Ex. 1001, 47:29–35.

Claim 25 depends from claim 20 and further requires "display the first image and/or the first text in a scrubber area, the scrubber area comprising a slider tool that enables a user to scrub forwards through the first video by dragging the slider tool." Ex. 1001, 48:62–67.

Patent Owner contends that the scrubber area of Sterner's Figure 11C is much smaller than the area proposed by Petitioner. PO Resp. 27 (showing Patent Owner's annotated version of Sterner's Figure 11C). According to Patent Owner, Sterner does not teach that comment area 1186 is displayed in a scrubber area. *Id.* at 27–29.

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In response, Petitioner contends that Patent Owner's position is premised on Patent Owner's proposed construction of "scrubber area," which should not be adopted. Reply 18–21.

First, we observe that Patent Owner's positions are indeed based on a proposed claim construction that we have not adopted. *See supra* Section II.C.1. As discussed in detail above, we determine that "scrubber area," as recited in claims 15 and 25, includes an area adjacent to a scrubber bar. *Id.* This adjacent area, however, does not require scrubbing functionality. *Id.*

Second, consistent with Petitioner's argument, Sterner discloses that Figure 11C shows a video playback screen 1180 that includes elements useful for viewing, navigating, processing, manipulating, and performing other functions relating to video and associated information. Ex. 1004 ¶ 230. This playback screen includes navigation area 1188 and comment area 1186. *Id.* Sterner further teaches that comment area 1186 is adjacent to navigation area 1188. *Id.* ¶ 231, Fig. 11C. Moreover, comment area 1186 "may display texts, images, video, or other information describing or adding to the footage seen in the video footage area 1184." *Id.* ¶ 231, Fig. 11C. Additionally, comment area 1186 may show cue point information, and may further comprise GUI controls, hyperlinks, or other modes of interactivity. *Id.* ¶¶ 231–232. Sterner provides that "the comment area 1186 may appear when a client interacts with a cue point location identifier 1192." *Id.* ¶ 231. In other words, Sterner teaches that the cue point information in comment area 1186 appears when the cue point location identifier is reached. *See id.* ¶¶ 231, 233.

Therefore, based on the complete record, we find that Petitioner has demonstrated by a preponderance of evidence that Sterner teaches displaying first/second image and/or text in a scrubber area (e.g., comment area 1186)

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and a scrubber area comprising a slider tool that enables a user to scrub forwards through the first video by dragging the slider tool (e.g., navigation area 1188).

5. Claims 14, 16, 17, 24, and 26

Petitioner contends Sterner also anticipates claims 14, 16, 17, 24, and 26. Pet. 42–48. Patent Owner does not present arguments for dependent claims 14, 16, 17, 24, and 26 separately from those disclosed for independent claims 9 and 20. *See* PO Resp. 23. Specifically, Patent Owner states:

> Claims 14-17 depend from independent claim 9, and claims 24-26 depend from independent claim 20. These dependent claims add limitations to the independent claims from which they depend. Accordingly, Sterner fails to anticipate claims 14-17 and 24-26 for at least the same reasons.

PO Resp. 23 (citing Ex. 2089 ¶ 72).

We have considered Patent Owner's arguments and reviewed Petitioner's contentions regarding claims 14, 16, 17, 22, 24, and 26. *See* Pet. 42–48; PO Resp. 23. Based on the complete record, we find Petitioner's arguments persuasive and supported sufficiently on the complete record before us, and, therefore, we adopt them as our own findings. *See* Pet. 42–48. Accordingly, we find that Petitioner has demonstrated by a preponderance of evidence that Sterner teaches all the limitations of claims 14, 16, 17, 24, and 26.

F. Obviousness over Sterner and Ahanger – Claims 11 and 22

Claim 22 depends from claim 20 and further recites:

> [22.1] provide for display on a user terminal a user interface that enables a given user to upload a given video to the system or provide a link to a given video;

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> [22.2] provide an interface that enables the given user to associate respective images and/or text with respective positions of the given video;
>
> [22.3] provide an interface that enables the given user to provide a title for the given video;
>
> video;
>
> [22.4] receive user-specified associations of respective images and/or text with respective positions of the given video;
>
> [22.5] receive a user-specified title for the given video;
>
> [22.6] cause the given video, the user-specified title, and the respective images and/or text to be viewed via at least one video player, the at least one video player configured to display: the respective images and/or text at the respective video positions.

Ex. 1001, 48:25–44. Claim 11 depends from claim 9 and recites similar limitations. Ex. 1001, 46:54–47:6.

For these limitations, Petitioner relies on arguments presented for claims 9 and 20 and further asserts that Sterner's VEE provides: (1) a display on a user terminal (e.g., editor terminal 134) that enables upload or linking of a given video; (2) an interface for the user to associate images/text with positions of the video; and (3) receipt of user-specified associations. Pet. 55–57 (citing Ex. 1004 ¶¶ 23, 57, 59, 93, 112, 114, 115, 159; Ex. 1002 ¶¶ 148–150).

Additionally, for limitation [22.3], Petitioner contends that Ahanger teaches a system for associating a title with a video. Pet. 57. More specifically, Petitioner contends Ahanger teaches that

> an interface enabling a user to provide a variety of information for a given video. *Id.*, ¶¶[0104] ("provid[ing] a user interface for a user to create, edit or modify fields and values of the fields of the metadata associated with the media," such metadata field including a "title"), [0006] (media including video); Ex. 1002, ¶¶151-53.

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Id. Petitioner adds that Ahanger's title is received when uploaded to Ahanger's system. *Id.* (citing Ex. 1008 ¶ 87; Ex. 1002 ¶ 155). Petitioner further explains that

> [a]A POSA would have been motivated to modify Sterner's interface to enable a user to provide a video title and to display such title during video playback, as described in Ahanger. Like Sterner, Ahanger describes a system for associating additional information (*e.g.*, ads in Ahanger) with a video, to be presented during video playback. Ex. 1008, Abstract. A POSA would have recognized and appreciated that such modification would have allowed a user to assign a video description and convey that description to a viewer, thereby providing context and information relating to the video.

Pet. 54–55 (citing Ex. 1002 ¶¶ 142–46).

In addition, Petitioner contends that the combination of Sterner with Ahanger teaches limitation [22.6] because Sterner's VPE causes the video and respective images/text to be viewed via the video player on the viewer terminal 132. Pet. 58 (citing Ex. 1004 ¶¶ 213–215, 240).

Patent Owner does not present arguments for claims 11 and 22 separately from those disclosed for independent claims 9 and 20. PO Resp. 33–34. Specifically, Patent Owner argues that

> Sterner does not anticipate or render obvious claims 9 or 20, from which claims 11 and 22 depend, respectively, at least because Sterner does not teach or suggest the limitations of claims 9 or 20, as shown *supra*. Ahanger does not cure the deficiencies of Sterner, and the Petition does not so assert.

Id. (citing Pet. 54–55; Ex. 2089 ¶ 87).

Based on the complete record, we find Petitioner's arguments persuasive and supported sufficiently on the complete record before us, and, therefore, we adopt them as our own findings. Accordingly, we determine that Petitioner has shown by a preponderance of the evidence that claims 11

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and 22 would have been obvious over the combination of Sterner and Ahanger. *See* Pet. 54–59.

G. Other Grounds of Obviousness Based on Sterner, Geer, Badoiu, Fink, and Ahanger

Petitioner also contends the challenged claims are unpatentable in light of Sterner alone or in combination with Badoiu; and, separately, Geer alone or in combination with Fink, Badoiu, and Ahanger. Pet. 49–54, 60–90.

Because Petitioner's challenges based on either Sterner alone or the combination of Sterner with Ahanger are dispositive with respect to all challenged claims 9–11, 14–17, 20–22, and 24–26, we need not reach the additional asserted grounds presented in the Petition. *See SAS Inst. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding that a petitioner "is entitled to a final written decision addressing all of the claims it has challenged"); *Boston Sci. Scimed, Inc. v. Cook Grp. Inc.*, 809 F. App'x 984, 990 (Fed. Cir. 2020) (nonprecedential) (stating that the "Board need not address issues that are not necessary to the resolution of the proceeding," such as "alternative arguments with respect to claims [the Board] found unpatentable on other grounds"); *cf. In re Gleave*, 560 F.3d 1331, 1338 (Fed. Cir. 2009) (not reaching other grounds of unpatentability after affirming a ground based on anticipation); *see also Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984) (An administrative agency is at liberty to reach a decision based on a dispositive issue because doing so "can not only save the parties, the [agency], and [the reviewing] court unnecessary cost and effort," but "can greatly ease the burden on [an agency] commonly faced with a . . . proceeding involving numerous complex issues and required by statute to reach its conclusion within rigid time limits."); *SK Hynix Inc. v. Netlist, Inc.*,

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IPR2017-00692, Paper 25 at 40 (PTAB July 5, 2018) (determining all challenged claims to be unpatentable and not addressing additional grounds).

H. Motion to Exclude

In connection with its Motion to Exclude, Petitioner seeks to exclude the Declarations of Dr. Valerdi (Ex. 2089), Narbeh Avedissian (Ex. 2092), and Nikhil Sreenath (Ex. 2093). Mot. Exclude.

The exhibits and testimony identified by Petitioner as a part of its Motion to Exclude have not been considered in a manner that is adverse to Petitioner. Accordingly, we determine that Petitioner's Motion to Exclude is moot, and we dismiss it as such.

III. CONCLUSION[11]

For the reasons discussed above, Petitioner has demonstrated by a preponderance of the evidence that claims 9–11, 14–17, 20–22, and 24–26 of the '780 patent are unpatentable.

[11] Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. *See* 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. *See* 37 C.F.R. §§ 42.8(a)(3), (b)(2).

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In summary

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
9, 10, 14–17, 20, 21, 24–26	102(b)	Sterner	9, 10, 14–17, 20, 21, 24–26	
11, 22	103(a)	Sterner, Ahanger	11, 22	
9, 10, 14–17, 20, 21, 24–26	103(a)	Sterner[12]		
10, 21	103(a)	Sterner, Badoiu		
17, 20, 24–26	103(a)	Geer, Fink		
9, 14–16	102(a)	Geer		
9, 14–16	103(a)	Geer		
21	103(a)	Geer, Fink, Badoiu		
10	103(a)	Geer, Badoiu		
11, 22	103(a)	Geer, Fink, Ahanger		
Overall outcome			9–11, 14–17, 20–22, 24–26	

[12] As explained above, we do not reach any of the grounds other than the asserted ground of anticipation based on Sterner and obviousness based on Sterner and Ahanger.

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IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 9–11, 14–17, 20–22, and 24–26 of the '780 patent are determined to be unpatentable;

FURTHER ORDERED that Petitioner's Motion to Exclude (Paper 30) is dismissed as moot; and

FURTHER ORDERED because this is a final written decision, the parties to this proceeding seeking judicial review of our Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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