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Filed on behalf of Shopify Inc.

By: Trishan Efram, Reg. No. 74,075 (Lead Counsel)
Gregory Lantier (*pro hac vice* to be filed) (Backup Counsel)
Daniel Williams, Reg. No. 45,221 (Backup Counsel)
Liv Herriot (*pro hac vice* to be filed) (Backup Counsel)
R. Gregory Israelsen, Reg. No. 72,805 (Backup Counsel)
Wilmer Cutler Pickering Hale and Dorr LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
Email: trishan.esram@wilmerhale.com
gregory.lantier@wilmerhale.com
daniel.williams@wilmerhale.com
liv.herriot@wilmerhale.com
greg.israelsen@wilmerhale.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHOPIFY INC.
Petitioner

v.

DKR CONSULTING LLC
Patent Owner

IPR2025-00130
U.S. Patent No. 11,455,678

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 11,455,678
CHALLENGING CLAIMS 1–20
UNDER 35 U.S.C. § 312 AND 37 C.F.R. § 42.104**

TABLE OF CONTENTS

	Page
I. MANDATORY NOTICES	1
A. Real Party-in-Interest	1
B. Related Matters.....	1
C. Counsel	2
D. Service Information	3
II. CERTIFICATION OF GROUNDS FOR STANDING	3
III. OVERVIEW OF CHALLENGE AND RELIEF REQUESTED.....	4
A. Prior Art.....	4
B. Grounds	5
IV. TECHNOLOGY BACKGROUND.....	5
A. Electronic Commerce	5
B. Electronic Commerce in Social Networks	6
C. Widgets for Product Listings.....	7
V. OVERVIEW OF THE '678 PATENT	8
A. Alleged Invention	8
B. Prosecution History	9
VI. CLAIM CONSTRUCTION	9
VII. LEVEL OF ORDINARY SKILL	10
VIII. SPECIFIC GROUNDS FOR UNPATENTABILITY	10
A. Ground 1: Claims 1–20 are Obvious Over Johnston	10
1. Claim 1	10
2. Claim 2.....	34
3. Claim 3.....	35
4. Claim 4.....	36
5. Claim 5.....	37
6. Claim 6.....	39
7. Claim 7.....	41

8.	Claim 8	43
9.	Claim 9	44
10.	Claim 10	47
11.	Claim 11	47
12.	Claim 12	47
13.	Claim 13	47
14.	Claim 14	47
15.	Claim 15	48
16.	Claim 16	50
17.	Claim 17	50
18.	Claim 18	50
19.	Claim 19	50
20.	Claim 20	51

B. Ground 2: Claims 1–4, 7–12, and 15–18 are Obvious over Wisner and Dierks

1.	Claim 1	51
2.	Claim 2	80
3.	Claim 3	81
4.	Claim 4	81
5.	Claim 7	82
6.	Claim 8	84
7.	Claim 9	84
8.	Claim 10	87
9.	Claim 11	87
10.	Claim 12	87
11.	Claim 15	87
12.	Claim 16	88
13.	Claim 17	89
14.	Claim 18	89

C. Ground 3: Claims 5, 6, 13, 14, 19, and 20 are Obvious over Wisner, Dierks, and Chang

1.	Claim 5	89
2.	Claim 6	93
3.	Claim 13	94
4.	Claim 14	94
5.	Claim 19	94
6.	Claim 20	94

IX.	DISCRETIONARY DENIAL IS NOT WARRANTED UNDER § 325(d).	95
A.	Overlooking the Prior Art was Material Error	95
B.	This Petition is not Cumulative of Unified Patents’ <i>Ex Parte</i> Reexamination.....	97
X.	CONCLUSION.....	98
XI.	APPENDIX OF CLAIM LISTING.....	99

Shopify Inc. (“Petitioner” or “Shopify”) respectfully requests *inter partes* review (“IPR”) of claims 1–20 of U.S. Patent (“USP”) No. 11,455,678 (the “’678 patent”) (EX1001) pursuant to 35 U.S.C. §§311–19 and 37 C.F.R. §42.1 *et seq.*

I. MANDATORY NOTICES

A. Real Party-in-Interest

Under 37 C.F.R. §42.8(b)(1), Petitioner certifies that Shopify Inc. is the real party-in-interest.

B. Related Matters

The ’678 patent is a continuation of application No. 13/571,293, now USP No. 9,679,298 and assigned to DKR Consulting LLC (“Patent Owner” or “PO”), which is a continuation-in-part of application No. 12/852,090, now abandoned.

Shopify is concurrently filing petitions for IPR against USP Nos. 10,846,785 (the “’785 patent”), 11,157,995 (the “’995 patent”) and 11,488,237 (the “’237 patent”). The ’785 and ’995 patents both claim priority to the ’678 patent, and the ’237 patent claims priority to the ’995 patent.

As of the filing date of this petition, Shopify knows of the following co-pending litigation involving the ’678 patent, in which PO asserts it is the owner: *DKR Consulting LLC v. Shopify, Inc.*, No. 2:23-cv-6904 (C.D. Cal.); *DKR Consulting, LLC v. Shopify, Inc.*, No. 2024-2279 (Fed. Cir.). The earliest date of service was December 5, 2023. A Motion to Dismiss was granted on August 1,

2024, finding all claims of the '678 patent to be ineligible under 35 U.S.C. §101. EX1025, 14 (“In short, the Asserted Patents do not claim patent-eligible subject matter under Section 101 and the Alice test.”), 10 (“In sum, all the claims in these patents describe inventions that are substantially similar and linked to the same idea. The Court therefore finds that Claim 1 of each of the Asserted Patents is representative of the other claims within those patents.”). On August 26, 2024, PO noticed its appeal of the district court’s dismissal order and final judgment. EX1026. The Court of Appeals for the Federal Circuit issued a Notice of Docketing on August 30, 2024. EX1030. On October 29, 2024, PO filed its opening brief. EX1031.

The '678 patent is currently under reexamination, Control No. 90/019,476. The request for *ex parte* reexamination (“EPR”) was filed by Unified Patents, LLC on April 9, 2024. EX1028. On May 16, 2024, the Patent Office ordered reexamination, finding a substantial new question of patentability as to claims 1–6 and 8–20 of the '678 patent. A non-final Office Action was issued on September 18, 2024. EX1029. PO petitioned for an extension of time to respond to the Office Action. The petition was dismissed, and PO failed to file a response by the November 18, 2024 due date. EX1033.

C. Counsel

Under 37 C.F.R. §§42.8(b)(3)–(4), Shopify identifies the following lead and backup counsel, to whom all correspondence should be directed.

Lead Counsel: Trishan Efram (Reg. No. 74,075)

Backup Counsel: Gregory Lantier (*pro hac vice* to be filed)
Daniel Williams (Reg. No. 45,221)
Liv Herriot (*pro hac vice* to be filed)
R. Gregory Israelsen (Reg. No. 72,805)

D. Service Information

E-mail: trishan.esram@wilmerhale.com
gregory.lantier@wilmerhale.com
daniel.williams@wilmerhale.com
liv.herriot@wilmerhale.com
greg.israelsen@wilmerhale.com

Post and hand delivery: Wilmer Cutler Pickering Hale and Dorr LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: 202-663-6000
Fax: 202-663-6363

Shopify consents to service by e-mail on lead and backup counsel.

II. CERTIFICATION OF GROUNDS FOR STANDING

Shopify certifies under 37 C.F.R. §42.104(a) that the patent for which review is sought is available for *inter partes* review (IPR) and under 37 C.F.R. §§42.101(a)–

(c) that Shopify is not barred or estopped from requesting an IPR challenging the patent claims on the grounds identified in this Petition.

III. OVERVIEW OF CHALLENGE AND RELIEF REQUESTED

Shopify requests review of claims 1–20 of the '678 patent and cancellation of these claims as unpatentable over the prior art.

A. Prior Art

The earliest claimed priority date of the '678 patent is August 6, 2010. EX1001 at 2. Shopify relies on the documents in the Table of Exhibits, including:

- USP Application Publication No. 2010/0114739 to Johnston (EX1005), published on May 6, 2010, as §§102(a), 102(e) prior art;¹
- USP No. 6,868,403 to Wiser et al. (“Wiser”) (EX1003), issued on March 15, 2005, as §102(b) prior art;
- USP Application Publication No. 2008/0183593 to Dierks (EX1004), published on July 31, 2008, as §102(b) prior art; and

¹ Johnston is entitled to the September 3, 2008 filing date of provisional application No. 61/093,917 to which it claims priority, as Dr. Mowry explains in his declaration. EX1002, ¶¶43–47.

- USP Application Publication No. 2008/0255962 to Chang et al. (“Chang”) (EX1008), published on October 16, 2008, as §102(b) prior art.

B. Grounds

Under 37 C.F.R. §§42.22(a)(1) and 42.104(b)(1)–(2), Shopify requests cancellation of claims 1–20 of the ’678 patent on the following grounds:

Ground	Basis	Claims	Reference(s)
1	§103	1–20	Johnston
2	§103	1–4, 7–12, and 15–18	Wiser and Dierks
3	§103	5, 6, 13, 14, 19, and 20	Wiser, Dierks, and Chang

This Petition, supported by Dr. Mowry’s declaration (EX1002), demonstrates that there is a reasonable likelihood Shopify will prevail with respect to cancellation of at least one of the challenged claims. *See* 35 U.S.C. §314(a).

IV. TECHNOLOGY BACKGROUND

A. Electronic Commerce

Electronic commerce—the trading of goods and services over the Internet—was well-known more than a decade before the ’678 patent’s priority date. For example, Wiser, claiming priority to a 1998 provisional application, explained that “[t]he rapid development of the **Internet** and the World Wide Web has primarily focused on these technologies as vehicles for **online commerce** for the distribution

of their products.” EX1003, 1:15–17; *see also* EX1006, ¶4 (“Merchants, service providers, and/or private individuals, may offer items for sale on a web page appearing on a website accessible by a browser via the internet.”); EX1011, 1:15–16 (“Consumers routinely shop for and **purchase products and services from merchant web sites.**”); EX1012, 1:15–17 (“**Internet electronic commerce** allows businesses to conduct sales transactions over the Internet between customers (buyers) and vendors **supplying goods and services.**”); EX1013, ¶4 (“**Electronic commerce** sites allowing users to post and sell their own items... have also become popular.”).² Indeed, the ’678 patent itself acknowledges that “[e]lectronic commerce on the Internet has become commonplace.” EX1001, 1:25–26. EX1002, ¶30.

B. Electronic Commerce in Social Networks

Performing electronic commerce in social networks was also well-known before the ’678 patent’s priority date. For example, USP Application Publication No. 2008/0228595 to Hill, filed in March 2007, disclosed a “system for supporting electronic commerce in social networks.” EX1013, Title; *see also id.*, ¶8 (“The present invention provides users the ability to add commerce capability (e.g., buy and sell goods and services) and syndicate product information to numerous social network third-party websites.”); *see also* EX1010 (Johnston-Provisional),

² All emphasis and annotations added unless stated otherwise.

Specification at 7 (“The seller can be selling their content on Facebook, Bebo, and MySpace in a few minutes. ... The Storefront can then be placed on social networking sites such as Facebook, MySpace, Bebo...”). Similarly, Chang, filed in 2007, disclosed a distributed commerce system for distributing an “item page” that includes an item for sale to “social networking servers reflecting a plurality of social networking sites” such as “FACEBOOK™, MYSPACE™, LINKED-IN™.” EX1008, Abstract, ¶41. EX1002, ¶31.

C. Widgets for Product Listings

Given the proliferation of electronic commerce over the Internet, including social networks, it became common to use “widgets” or widget code to allow sellers to more easily and freely advertise (*i.e.*, “list”) their products for sale. A “widget” is simply a portable piece of code that can be installed and executed within an environment using the same or a different programming language. *See, e.g.*, EX1008, ¶31. For example, Chang disclosed widget servers that generate widget code for item/web pages related to items for sale that could be distributed to social networking sites. *See, e.g., id.*, ¶¶37,41, Figure 1. Notably, systems were known to gather pertinent information from sellers and generate such widget code. For instance, Dierks in 2008 disclosed a user interface that “presents a user with an easy, step-by-step process for entering relevant information and obtaining... code” that could be “cut-and-pasted into the user’s web page.” EX1004, ¶¶71, 74. Likewise,

Johnston disclosed a server that provides user interfaces that allow sellers to publish their product listings to the sellers' social networking sites and that generate "Embed code" to display the product listings in "any HTML web site." EX1005, Figures 3A–3G, ¶¶225–231. The widget code in the prior art comports with the '678 patent's description. *See* EX1001, 1:62–65 ("A web widget is portable software that can be installed and executed within a hypertext-markup-language web page by an end user that does not require additional compilation."). EX1002, ¶32.

V. OVERVIEW OF THE '678 PATENT

A. Alleged Invention

The claims of the '678 patent describe a system with a server that is configured to generate and distribute a product listing and control a transaction processing service to process a payment for a purchase of a product associated with the product listing. *See* EX1001, claims 1, 9, and 15. EX1002, ¶33.

As the grounds below demonstrate, a server generating and distributing product listings and processing payments for a purchase was well-known in the art before the '678 patent's priority date. EX1002, ¶34. Independent claims 1, 9, and 15 are essentially identical. In the small number of cases where claims 9 and 15 include features absent from claim 1, these features are discussed separately below in the grounds.

B. Prosecution History

The '678 patent issued from application No. 16/512,018, filed on July 15, 2019, claiming priority to application No. 12/852,090 (filed on August 6, 2010). Prior to any Office Action, the applicant filed nine preliminary amendments. The Examiner issued a Notice of Allowance on July 7, 2022, including Examiner's amendments to prosecution claims 49, 57, and 63. *See* EX1009, 245–255. The Examiner provided no evaluation of the claims in view of any prior art at any point during prosecution.

In the Notice of Allowance, the Examiner stated that the closest prior art references (which the Examiner did not identify, much less evaluate in writing) did not disclose an “application server controlling a transaction processing service” or “an application server with a widget builder resource that generates a product listing and which controls a transaction processing service configured to process a purchase transaction of the product.” *Id.*, 254. As the grounds below demonstrate, the prior art discloses these features.

VI. CLAIM CONSTRUCTION

The challenged claims of the '678 patent are construed “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. §282(b).” 37 C.F.R. §42.100(b) (Nov. 13, 2018). Each claim term should be given its plain and customary meaning as understood by one of ordinary skill in

the art, in accordance with *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). If PO, seeking to avoid the prior art, offers a specific construction or interpretation, Shopify reserves the right to respond.

VII. LEVEL OF ORDINARY SKILL

A person of ordinary skill in the art (“POSITA”) at the time of the earliest claimed priority date of the ’678 patent (August 6, 2010) would have had at least the equivalent of a bachelor’s degree in computer science, computer engineering, or a related subject and two or more years of experience in the field of distributed systems, transaction processing, and web-based user interfaces. Less work experience may be compensated by a higher level of education, such as a master’s degree, and vice versa. EX1002, ¶29.

VIII. SPECIFIC GROUNDS FOR UNPATENTABILITY

Under 37 C.F.R. §42.104(b)(4)–(5), the following sections (as confirmed in Dr. Mowry’s declaration, EX1002, ¶¶56–273) detail the grounds of unpatentability, the limitations of challenged claims 1–20 of the ’678 patent, and how these claims were therefore obvious in view of the prior art.

A. Ground 1: Claims 1–20 are Obvious Over Johnston

1. Claim 1

a) [preamble]: “A system for distributing multimedia content over a network, comprising:”

Regardless of whether the preamble is limiting, Johnston discloses it. For example, Johnston discloses a system including a **platform server 110** that communicates, over networks 104 and 104', with devices that display a plurality of **Storefronts 102a–102c** that allows buyers to purchase content, products, and services from sellers. *See, e.g.*, EX1005, ¶114, Figure 1A. Johnston makes clear that “[c]ontent may include any type or form of digital content or content recordable on media, such as music, digital books, application tools or software, and video clips”—*i.e.*, “*multimedia content*.”³ *Id.* **Platform server 110** distributes multimedia content to the **Storefronts**. *See, e.g., id.*, ¶116 (“The Storefront may communicate via any type and form of protocol, such as HTTP/HTTPS, with the Server 110, such as to obtain previews of the content and subscriptions that an artist is selling.”); *see also id.*, ¶145 (“The platform may include... universal **content distribution**”). Johnston also discloses that networks 104 and 104' can be the Internet. *Id.*, ¶¶114, 143. EX1002, ¶57.

³ Terms that appear in the challenged claims are italicized throughout.

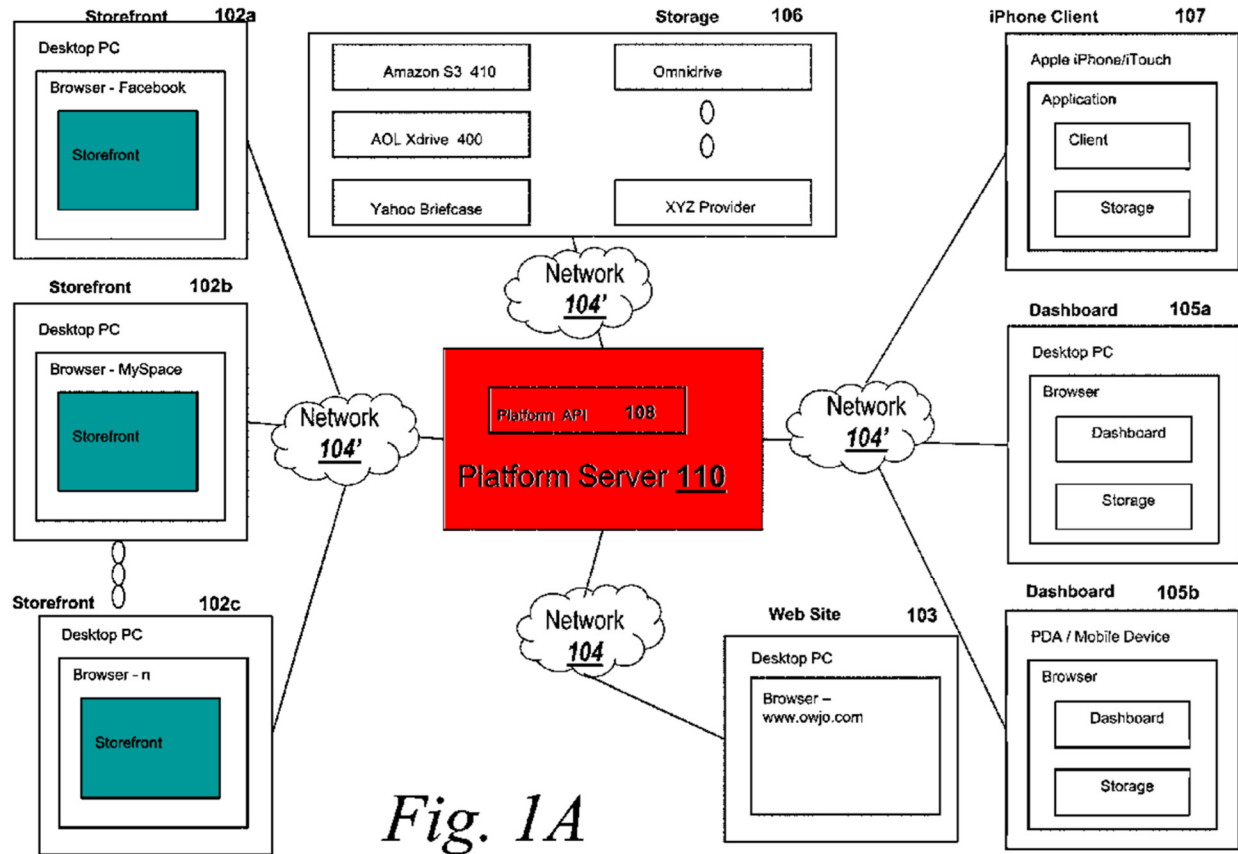


Fig. 1A

EX1005, FIG. 1A

Therefore, Johnston discloses the preamble of claim 1. EX1002, ¶58.

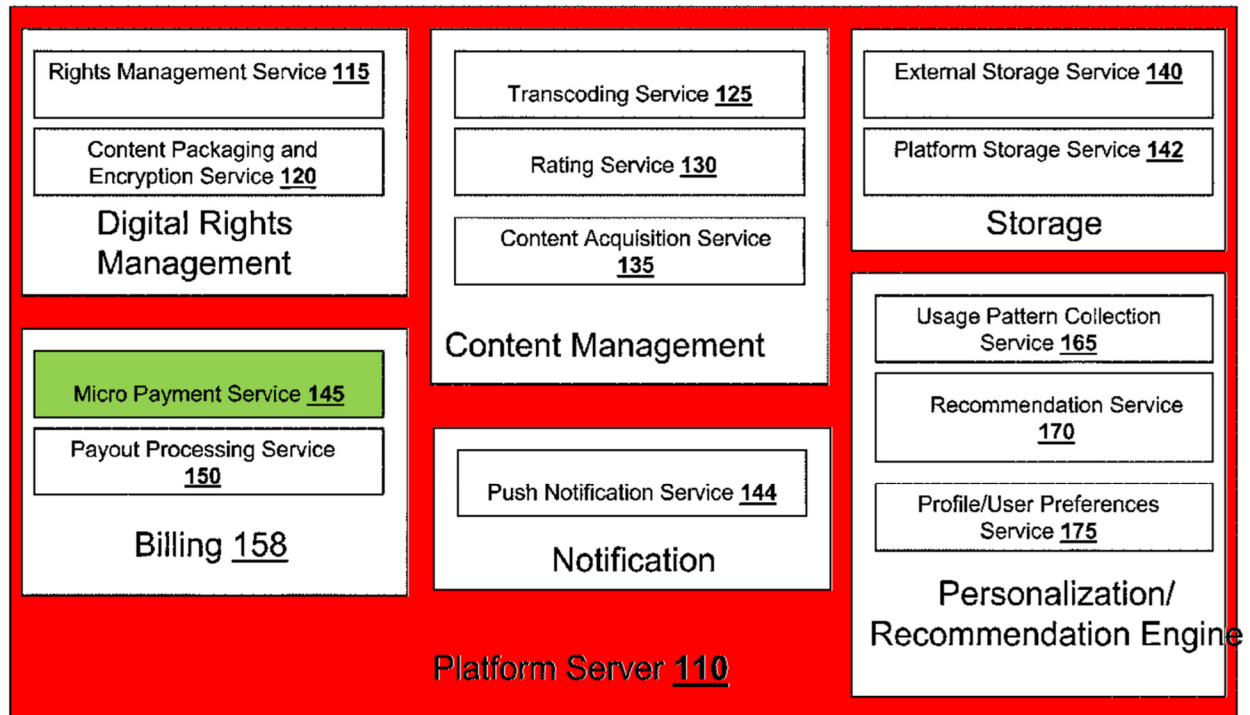
b) 1[a]: “a server configured to control a transaction processing service; and”

Johnston discloses element 1[a]. EX1002, ¶59.

First, Johnston’s **platform server 110**, in the Figure 1A system, is “a server”: “the platform server 110... may comprise a single server, a server farm or a cluster of one or more application servers or nodes.” EX1005, ¶115. EX1002, ¶60.

Second, **platform server 110** includes a billing module 158, which includes a **micro payment service 145**. EX1005, ¶184, Figure 1C. **Micro payment service**

145 is “a transaction processing service.” Johnston explains that **micro payment service 145** allows “sellers and buyers to pay for products at low values or for small amounts of monies without incurring credit card or other third-party transaction fees.” *Id.*, ¶185. EX1002, ¶61.



EX1005, FIG. 1C

Third, Johnston discloses that the third-party transaction fees can be avoided “by processing a transaction via the OWJO platform and **controlling** the transaction independent of a third party payment processor.”⁴ *Id.*, ¶185. In other words,

⁴ Johnston does not spell out or define “OWJO,” which appears to be a brand name.

platform server 110 is “*configured to control*” **micro payment service 145**.

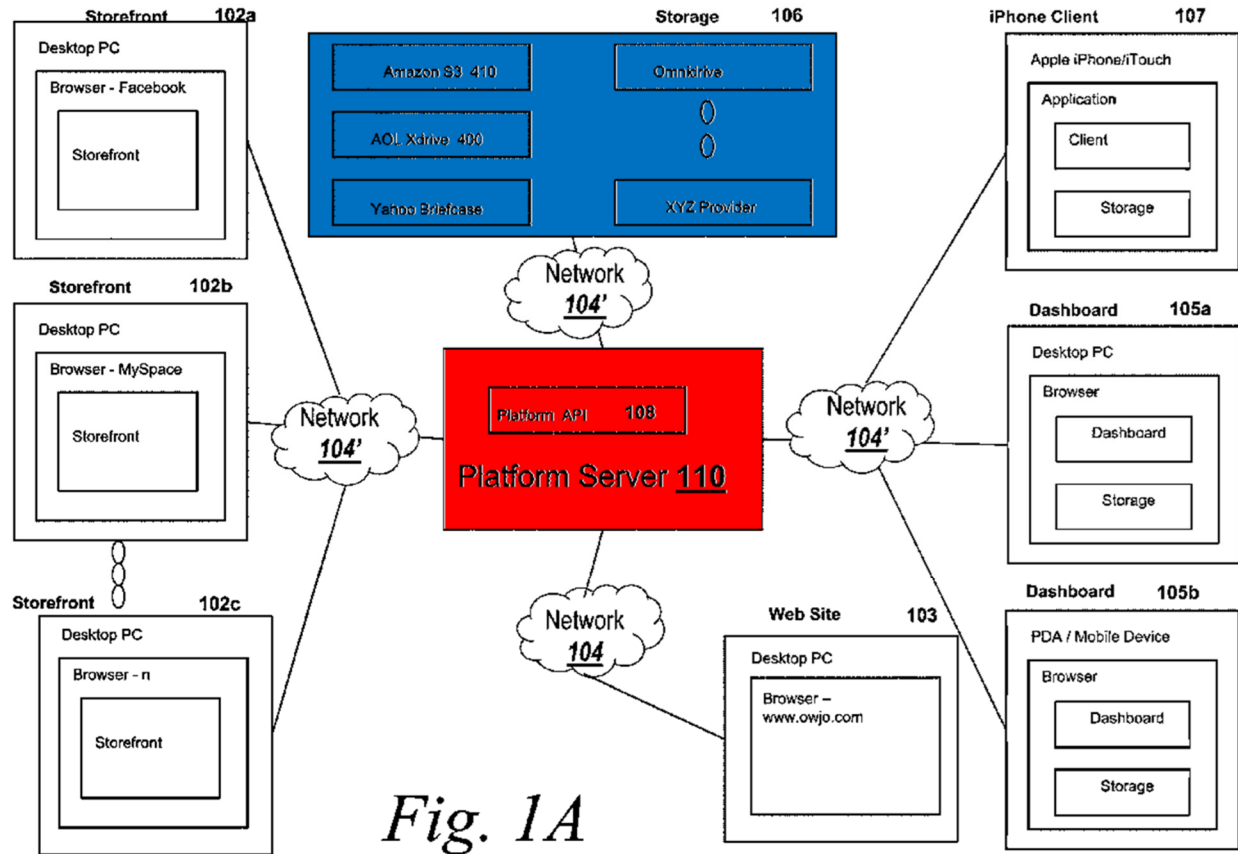
EX1002, ¶62.

Therefore, Johnston discloses element 1[a]. EX1002, ¶63.

c) 1[b]: “a storage resource communicatively coupled to the server and configured to store an item, wherein the item comprises an identifier, multimedia content, and metadata,”

Johnston discloses element 1[b]. EX1002, ¶64.

First, Johnston’s system includes **storage 106**—“a set of one or more storage services or locations **to store and retrieve content by the platform 110**.” EX1005, ¶118. **Storage 106** is “*communicatively coupled to*” **platform server 110** (“*the server*”) via network 104’. *See id.*, Figure 1A; *cf.* EX1001, Figure 1A (illustrating storage resource 124 coupled to application server 106 via a network including file management server 114). EX1002, ¶65.



EX1005, FIG. 1A

Second, **storage 106** is “a storage resource.” Johnston explains that “storage 106 includes any type and form of storage drives, mediums and units” and that, in some embodiments, **storage 106** uses storage services like “Amazon S3, AOL Xdrive, Microsoft SkyDrive, Google Documents, Yahoo Briefcase and Omnidrive.” *Id.*, ¶118; *cf.* EX1001, 5:6–8 (“cloud-based storage resource 124 [is] provided by the Amazon Web Services group at Amazon.com, Inc.”). EX1002, ¶66.

Third, **storage 106** stores content such as music, digital books, application tools or software, and video clips. *See* EX1005, ¶¶118, 114; *see also id.*, ¶41 (“an

artist can upload content”). Each media file stored in **storage 106** is “*an item*.” Cf. EX1001, 6:37–38 (“the items include individual songs, song releases, or entire song catalogues”), 11:25–26 (“each uploaded content file represents an item for promotion and distribution”). EX1002, ¶67.

Fourth, Johnston discloses that “a digital right, including information associated with the digital right, can be encoded along with **content metadata** into... an MP3 file.” EX1005, ¶309. Johnston explains that “content digital right may be composed of a unique **identifier for the content**, the buyer unique identifier and/or the play, execute, print and display constraints for the content.” *Id.*, ¶212. Accordingly, a media file (*e.g.*, an MP3 file) stored in **storage 106** may comprise not only (i) media data (*e.g.*, the actual music; “*multimedia content*”) but also (ii) a unique identifier for the content and the buyer unique identifier (“*an identifier*”) and (iii) content metadata (“*metadata*”). Thus, Johnston discloses “*the item comprises an identifier, multimedia content, and metadata*.” EX1002, ¶68.

Therefore, Johnston discloses element 1[b]. EX1002, ¶69.

d) 1[c]: “wherein the server is configured to: receive the item from the storage resource;”

Johnston discloses element 1[c]. Johnston’s **platform server 110** (“*the server*”) receives content (*e.g.*, a media file; “*the item*”) from **storage 106** (“*the storage resource*”). EX1005, ¶118 (“The Storage 106... is a set of one or more

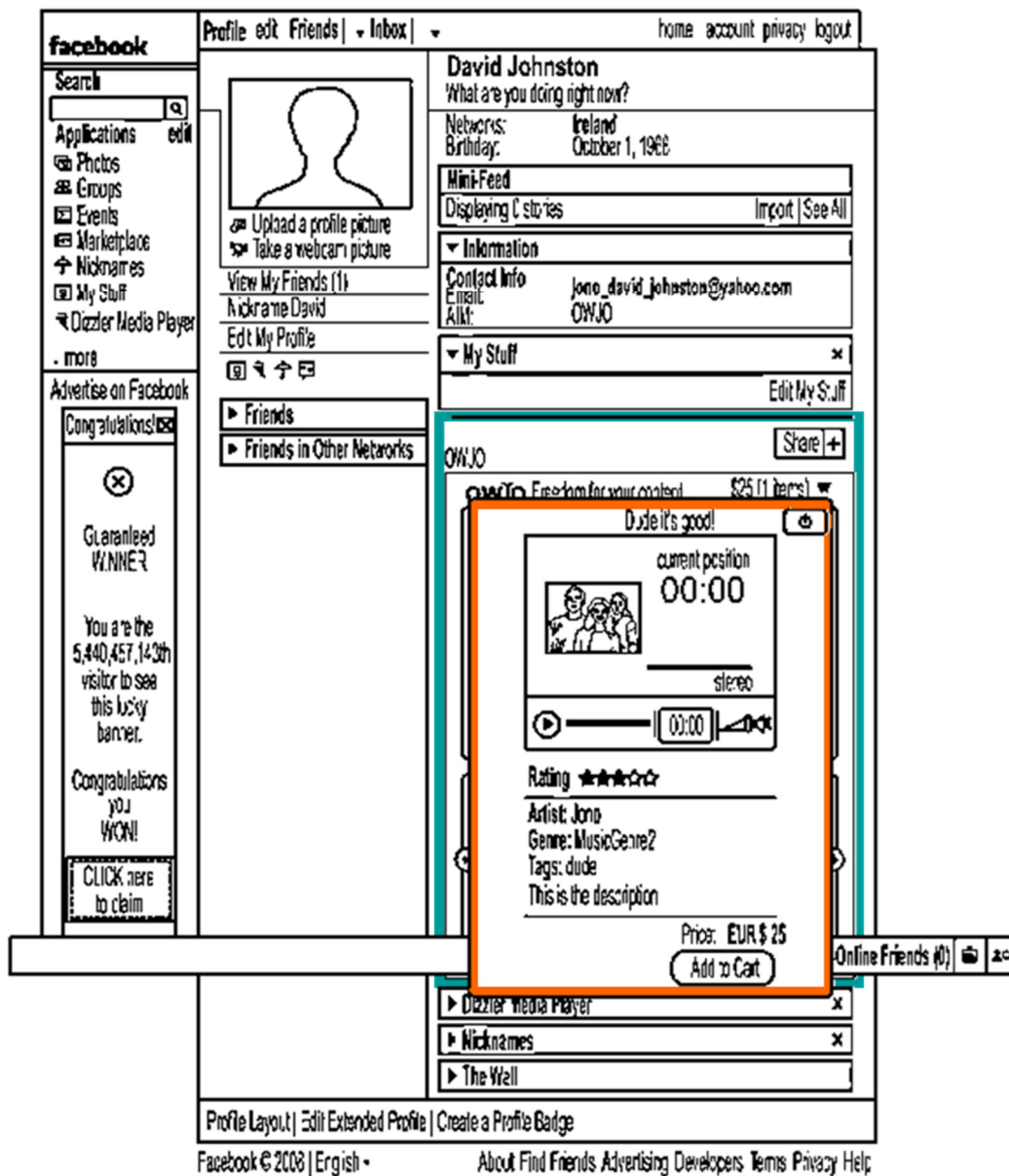
storage services or locations to store and retrieve content by the platform 110.”).

EX1002, ¶70.

e) 1[d]: “[wherein the server is configured to:] execute a widget builder resource configured to generate a product listing, wherein the product listing includes: (i) information associated with the item, (ii) a marketplace rule, and (iii) a clickable buy button;”

Johnston discloses element 1[d]. EX1002, ¶71.

First, Johnston discloses that “[t]he **Storefront** is a **widget** or component, such as a Macromedia Flash component, that can be embedded on any website or on the artist’s own social networking profile.” EX1005, ¶21. Further, Johnston’s **Storefront** includes “a product listing.” *Id.*, ¶42 (“**storefront widget may comprise an arrangement of elements for a user interface for the display, selling and buying of any content, products and/or services.**”); *see also id.*, claim 1. For example, in Figure 4B, Johnston illustrates a **product listing** in a **Storefront** for a music track (titled “Dude it’s good!”) for sale at EUR \$ 25. EX1002, ¶72.



EX1005, FIG. 4B

Second, referring to Figures 3A–3G, Johnston discloses a seller “creating an OWJO Storefront via a user interface of the OWJO platform.” EX1005, ¶225. For example, in Figure 3B, the user interface allows the seller to enter information,

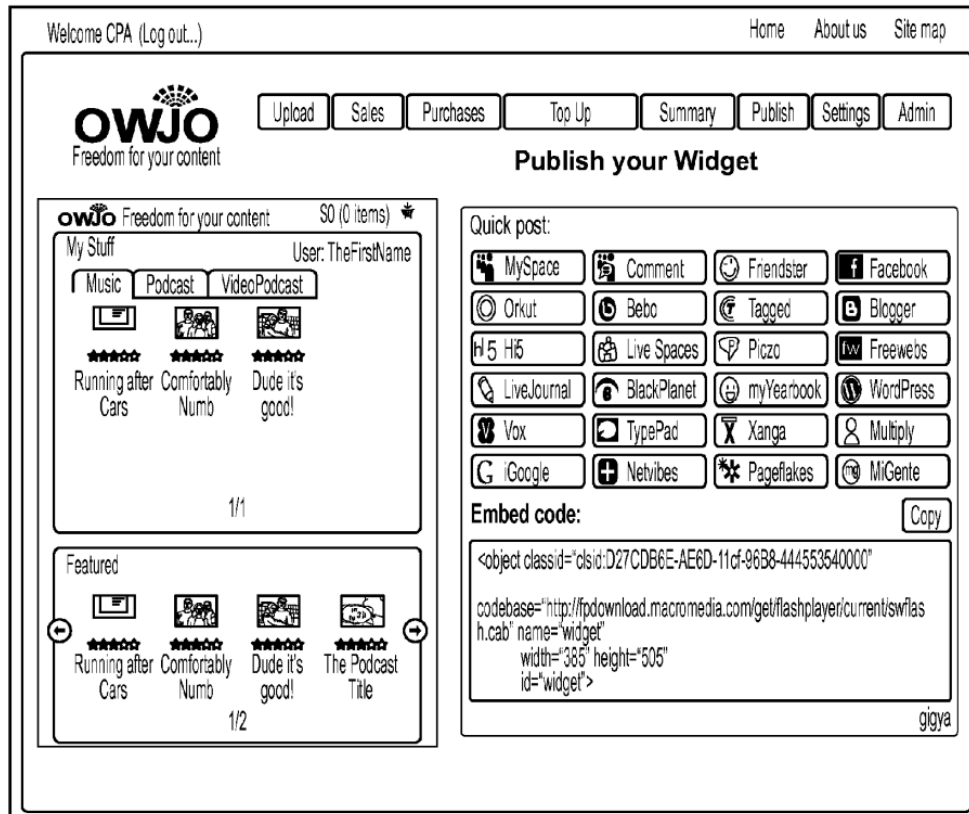
including a price, associated with music to be listed in a product listing on the seller's Storefront. *See id.*, ¶¶226. EX1002, ¶¶73.

The screenshot shows a web interface for OWJO, titled "Freedom for your content". At the top, there is a navigation bar with links: "Welcome CPA (Log out...)", "Home", "About us", and "Site map". Below this is a secondary navigation bar with buttons: "Upload", "Sales", "Purchases", "Top Up", "Summary", "Publish", "Settings", and "Admin". The main content area is titled "Upload Content" and has tabs for "music", "videos", "images", "podcasts", and "vodcasts". The "music" tab is selected. On the left, there is a "My Stuff" section showing a list of items: "Running after Cars", "Comfortably Numb", and "Dude it's good!". Below this is a "Featured" section showing the same items plus "The Podcast Title". The right side of the interface is the "Music file Settings" form. It includes fields for "Name of track:", "Artist:", "Tags:", and "Genre:". There is a "Preview track:" section with a text box and a "Browse..." button. Below that is a "Music file:" section with a text box and a "Browse..." button. At the bottom, there is a "Thumbnail:" section with a text box and a "Browse..." button. A "Set your price" section is at the bottom right, with a dropdown menu set to "EUR" and a text box containing "0". An "upload" button is at the bottom right of the form.

EX1005, FIG. 3B

In Figure 3G, another user interface allows the seller to publish the seller's **Storefront** widget to the seller's social networking sites and generates an "Embed

code” that allows the seller to embed the **Storefront** widget in “any HTML web site.” *Id.*, ¶231. EX1002, ¶74.



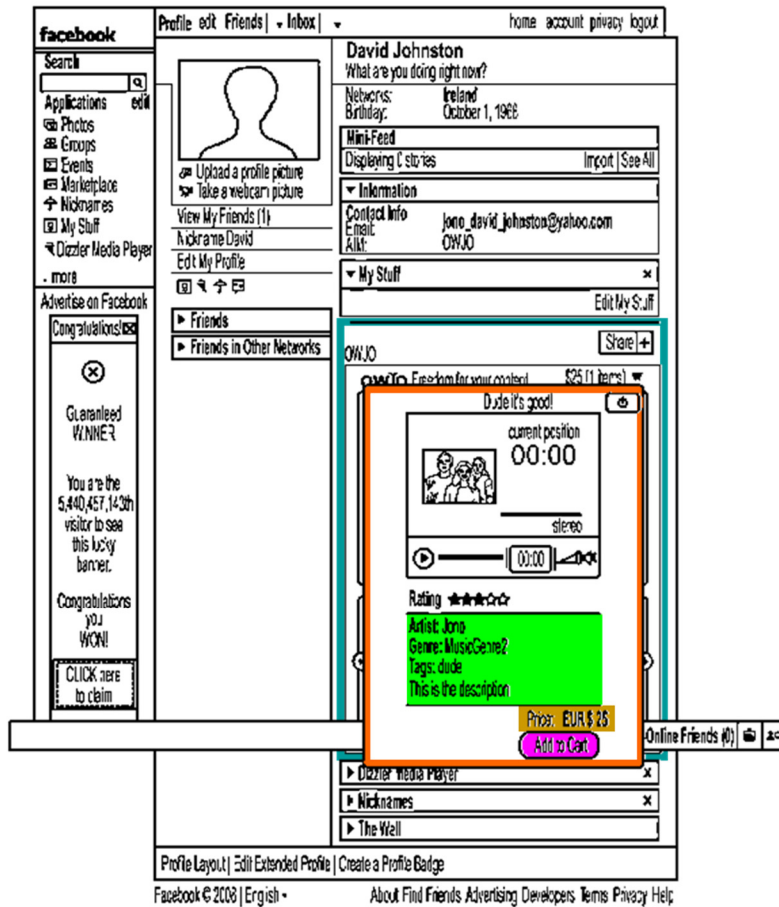
EX1005, FIG. 3G

Thus, Johnston’s Figures 3A–3G user interface constitutes “a *widget builder resource configured to generate*” a **product listing** included in a **Storefront** widget. EX1002, ¶75.

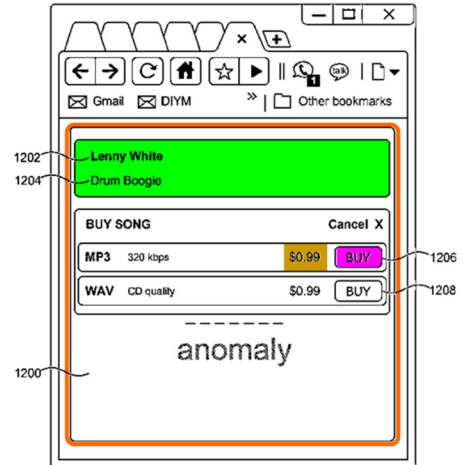
Third, the Figures 3A–3G user interface is executed by platform server 110 (“*the server*”). Johnston explains that “the seller or artist establishes, via the OWJO web site 103, a Storefront and makes available content for purchase.” EX1005, ¶211. Web site 103 “is the web presentation layer to the platform Server 110” and

provides access to “the functionality and services of the platform 110 via any type and form of user interface.” *Id.*, ¶138. The functionality and services of platform server 110 include allowing a seller to create (“generate”) a **product listing** included in a **Storefront**. EX1002, ¶76.

Fourth, referring to Figures 4A–4C, Johnston describes an exemplary **Storefront** widget running within a seller’s social networking profile. As can be seen in Figure 4B (reproduced below alongside the ’678 patent’s Figure 12), the **product listing** in the **Storefront** includes (i) information about a music track for sale such as “**Artist**” and “**Genre**” (“*information associated with the item*”), (ii) the “**Price: EUR \$ 25**” of the music track (“*a marketplace rule*”; cf. EX1001 (the ’678 patent), claim 4 (“the marketplace rule comprises one or more of: a price...”), and (iii) an “**Add to Cart**” button (“*a clickable buy button*”). EX1002, ¶77.



EX1005, FIG. 4B



EX1001, FIG. 12

Therefore, Johnston discloses element 1[d]. EX1002, ¶78.

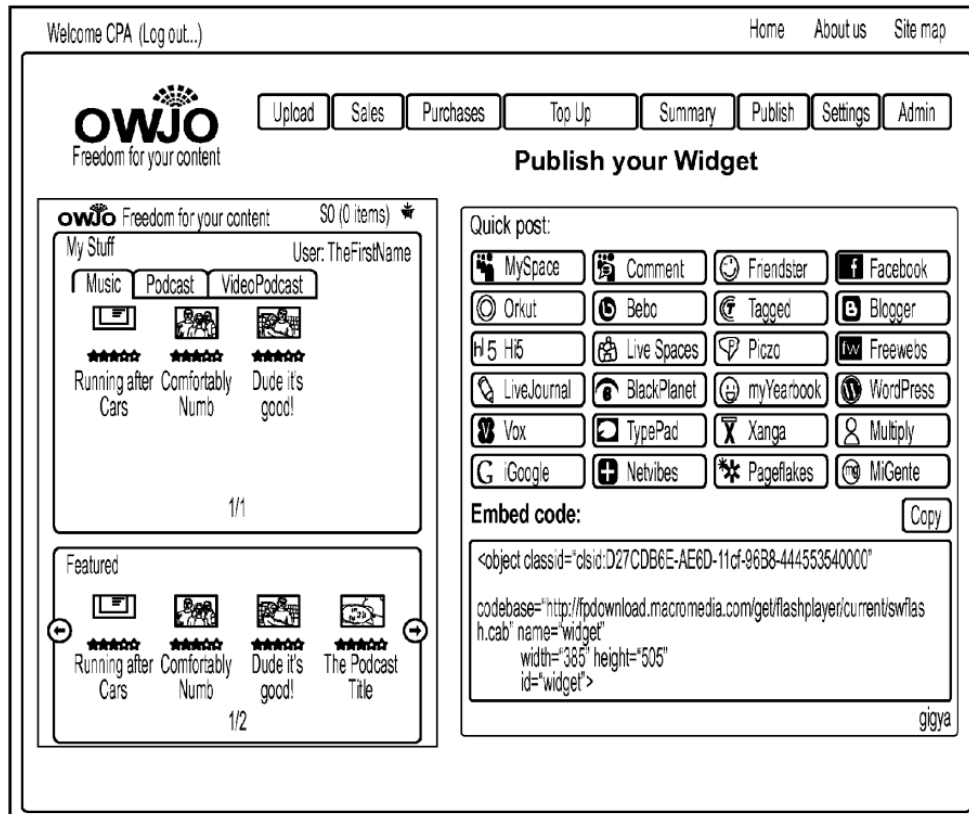
f) 1[e]: “[wherein the server is configured to:] distribute the product listing to a web site or a distributed application, wherein the product listing is configured to be displayed on the web site or the distributed application based on the marketplace rule;”

Johnston renders obvious element 1[e]. EX1002, ¶79.

First, as discussed for element 1[d], Johnston’s user interface for **platform server 110** allows a seller to publish (“*distribute*”) the seller’s **Storefront** widget

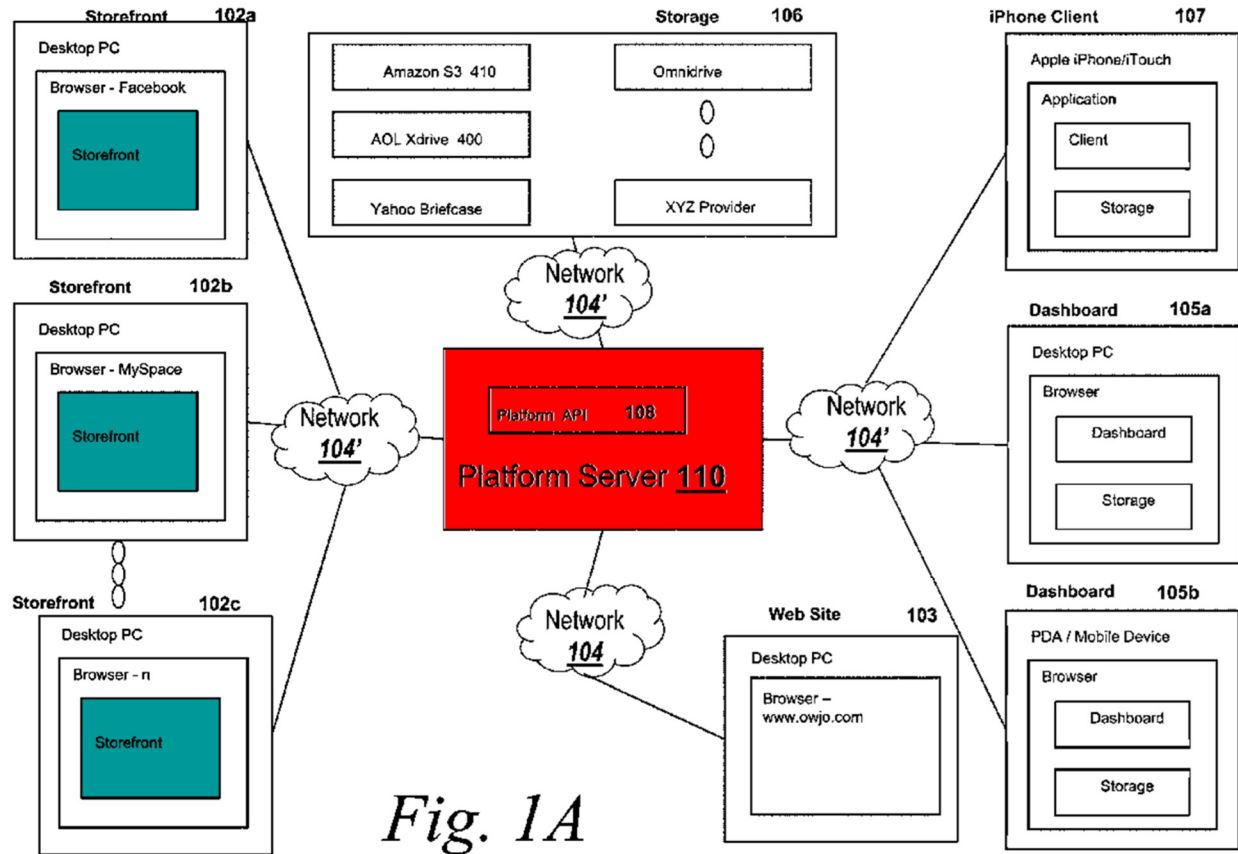
including a **product listing** to social networking sites and “any HTML web site.”

See EX1005, ¶231, Figure 3G. EX1002, ¶80.



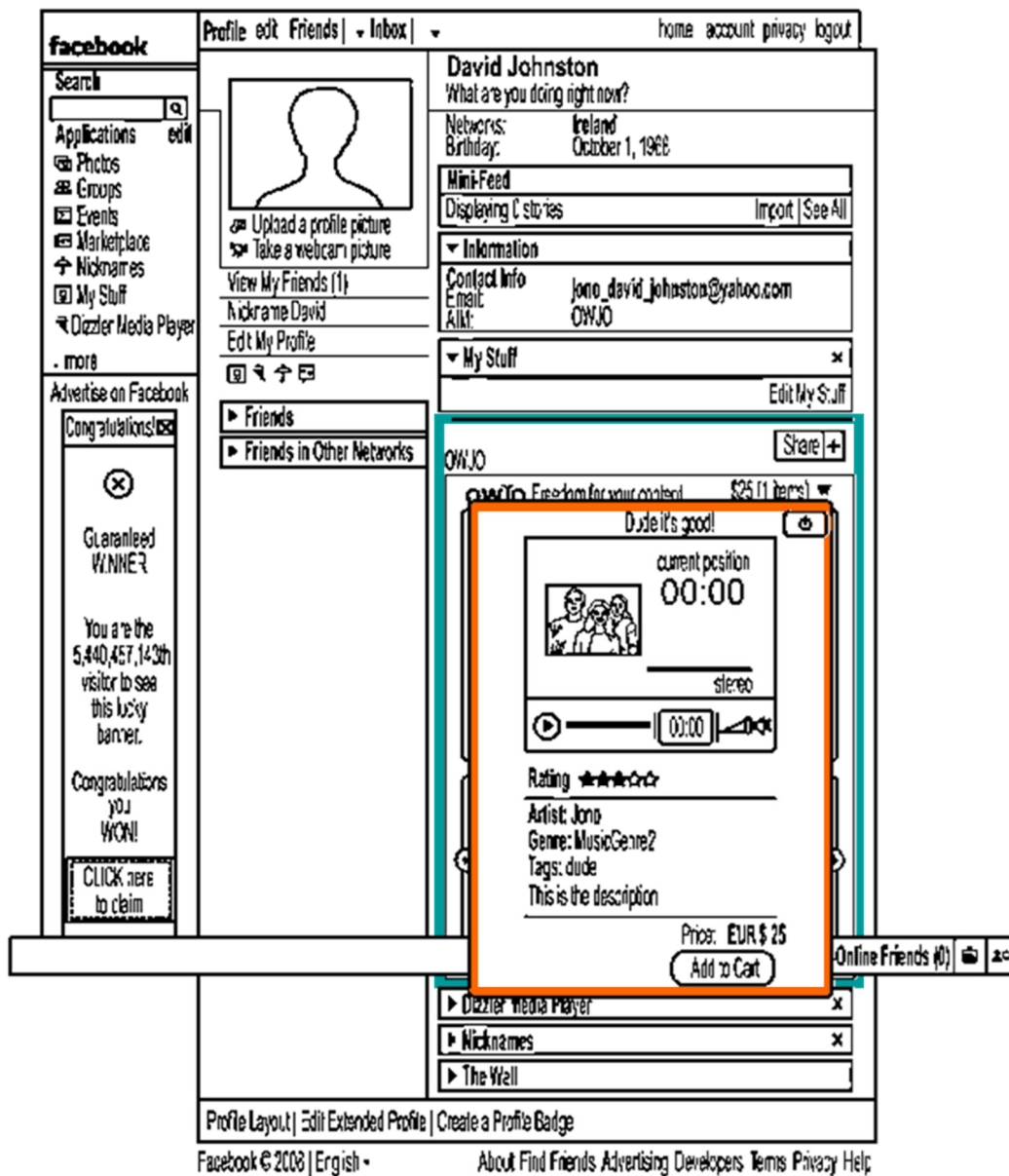
EX1005, FIG. 3G

In Figure 1A, Johnston discloses **Storefront 102a–102c** running in web browsers of desktop computers, respectively within a “Facebook profile,” a “MySpace profile,” and “any website or social networking profile of a contributing artist.” *Id.*, ¶116; *see also id.* (“Amazon, Ebay, Google Product Search, Bizrate, Dealnews, Lulu, Twitter, LinkedIn and web-blogs are further examples of websites that can support a Storefront.”). EX1002, ¶81.



EX1005, FIG. 1A

Johnston illustrates a more detailed **Storefront** including a **product listing** running within and “*displayed on*” a seller’s Facebook profile webpage in Figures 4A–4C (Figure 4B below). *See id.*, ¶¶252–254. EX1002, ¶82.



EX1005, FIG. 4B

Second, Johnston also discloses distributing the Storefront widget to “a distributed application.” For example, Johnston discloses “an iPhone/iTouch application or client agent executing in a native environment on Apple iPhone/iTouch.” *Id.*, ¶135; see also *id.*, Figure 1A (illustrating iPhone client 107).

The iPhone client allows a user to “download, install and/or operate a Storefront widget.” *Id.*, ¶136. As Johnston illustrates in Figure 1A, the iPhone/iTouch application or client agent executing on the **iPhone client 107** is in communication with platform server 110 via network 104' and is thus “a distributed application.” EX1002, ¶83.

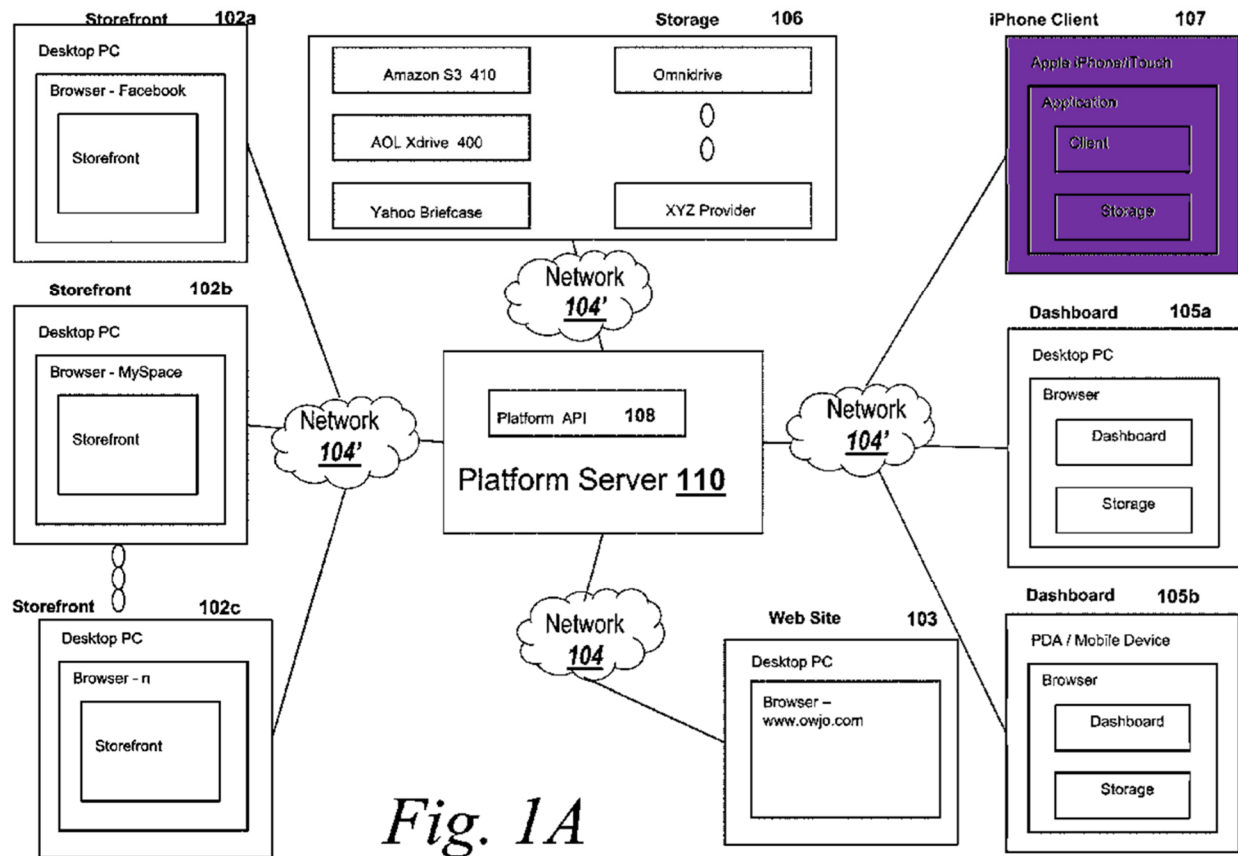


Fig. 1A

EX1005, FIG. 1A

Third, a POSITA would have found it obvious, before the '678 patent's priority date, to distribute a product listing based on the **price** (“the marketplace rule”) of an item. For example, in 2006, USP Application Publication No.

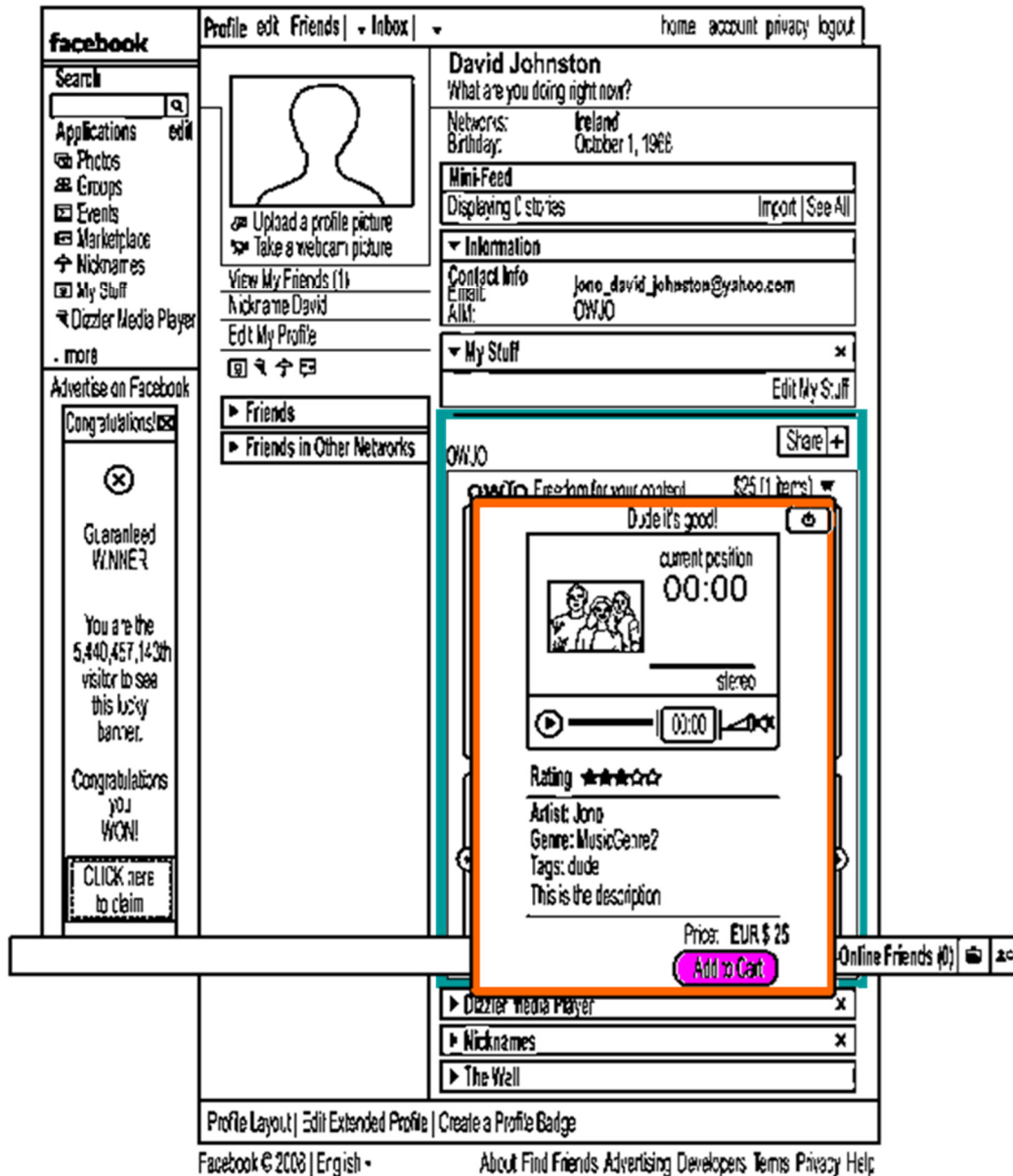
2006/0271437 to Maggio disclosed that companies could utilize data including a consumer's past order history "to send promotions to specific consumers." EX1016, ¶13. A POSITA would have understood "past order history" to include prices paid by the consumer. In fact, Johnston's platform server 110 is also set up to "collect statistics on sales activity across some or all of the OWJO sellers." EX1005, ¶176. Thus, a POSITA would have found it obvious that a seller, via the user interface of platform server 110, could distribute the seller's Storefront widget based on collected statistics, including the **price** for a song ("*based on the marketplace rule*"). EX1002, ¶84.

Therefore, Johnston renders obvious element 1[e]. *Id.*, ¶85.

g) 1[f]: "[wherein the server is configured to:] receive an indication that the clickable buy button has been selected by a remote computing device; and"

Johnston discloses element 1[f]. For example, Johnston discloses that "the buyer can decide to purchase content by clicking on the '**Add to Cart**' button on FIG. 4B," in which case, the item displayed in the **product listing** in the **Storefront** is added to the user's shopping cart. EX1005, ¶261. As discussed for element 1[d], the "**Add to Cart**" button corresponds to "*the clickable buy button.*" Because the **Storefront** and **product listing** are displayed on a web site in a desktop browser or a distributed application, distinct from platform server 110, a POSITA would have

understood that a buyer would click on the “**Add to Cart**” button on “a remote computing device.” See *id.*, Figure 1A. EX1002, ¶186.



EX1005, FIG. 4B

A POSITA would have understood that Johnston’s platform server 110 (“the server”) would receive an indication that the buyer clicked on the “**Add to Cart**”

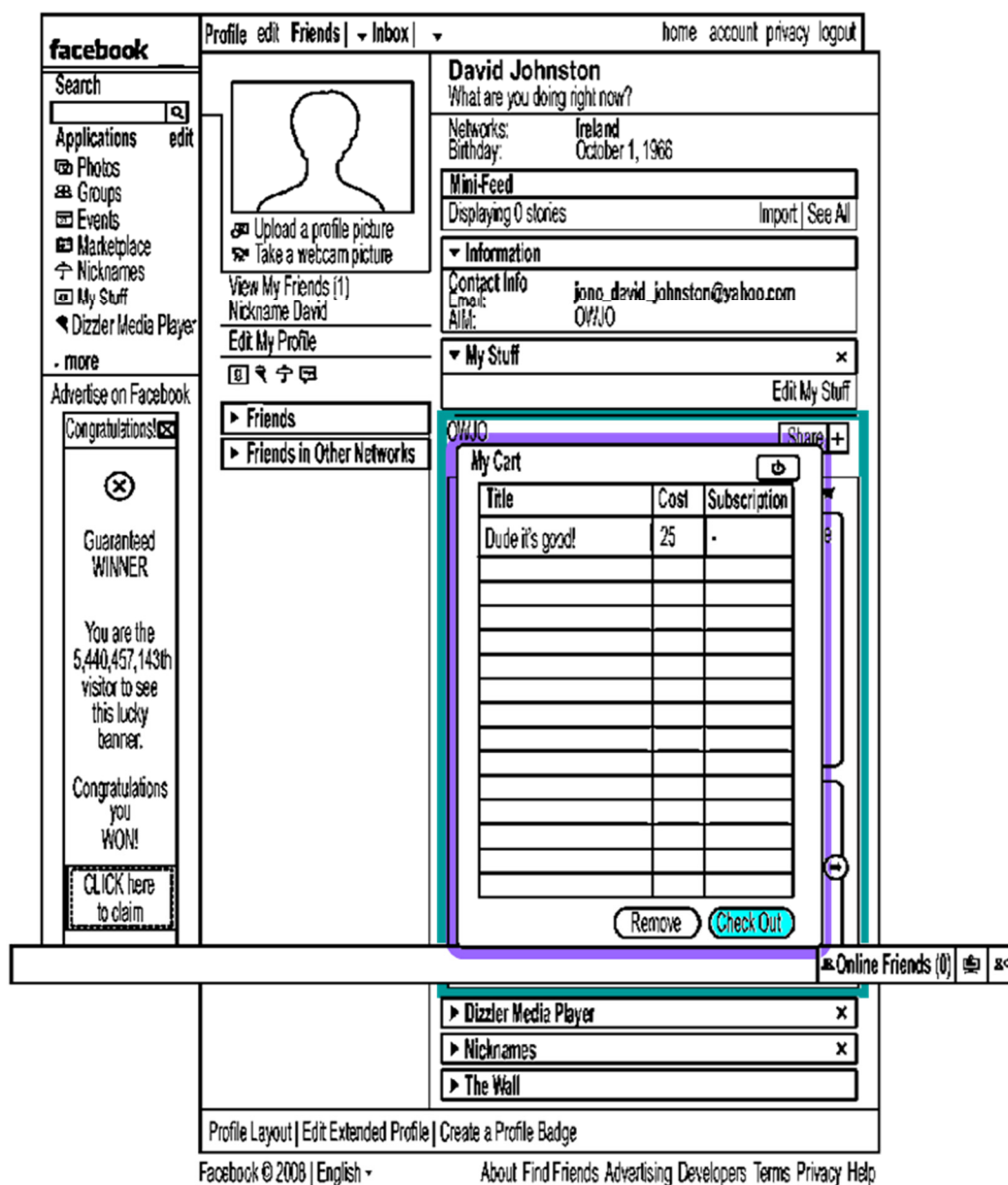
button to allow platform server 110 to keep track of item(s) added to the user's shopping cart and subsequently complete the checkout process. EX1002, ¶87.

Therefore, Johnston discloses element 1[f]. *Id.*, ¶88.

h) 1[g]: “[wherein the server is configured to:] provide a checkout screen to the remote computing device,”

Johnston discloses element 1[g]. EX1002, ¶89.

First, in the **Storefront** in Figure 4C, Johnston discloses a “**shopping cart**” interface that includes a “**Checkout**” button and allows a buyer to initiate a checkout process to “purchase items.” *See* EX1005, ¶254. Johnston illustrates the shopping cart with an item to be purchased along with its cost. *Cf.* EX1001, 17:55–57 (“The checkout screen of this web widget 1300 includes the total cost of the content file...”). Accordingly, the **shopping cart** interface corresponds to “*a checkout screen.*” EX1002, ¶90.



EX1005, FIG. 4C

In some embodiments, Johnston’s system may prompt the buyer to sign in as “a returning customer” or “create a new OWJO account,” as shown in Figure 4D. *Id.*, ¶¶255–256. A POSITA would have understood that the interfaces in Figure

4D—also with a “Checkout” button—are part of the checkout process and would not be displayed if the buyer had already signed in. EX1002, ¶91.

Home About Us Site Map

Purchase Content

My Basket

Name	Description	Subscription Length	Price
Name	Description	Price	
Dude it's good!	This is the description	25.00	remove...
Total:		25.00	

You are not logged in. To continue with your purchase please enter your login and password. Please select "I am a new customer" tab if you don't have an OWJO account yet.

☐ I am a returning customer ☐ I am a new customer

User Name:

Password:

Checkout

Home About Us Site Map

Purchase Content

My Basket

Name	Description	Subscription Length	Price
Name	Description	Price	
Dude it's good!	This is the description	25.00	remove...
Total:		25.00	

You are not logged in. To continue with your purchase please enter your login and password. Please select "I am a new customer" tab if you don't have an OWJO account yet.

☐ I am a returning customer ☐ I am a new customer

User Name:

New Password:

Confirm Password:

Security Code:

Enter Code:

Checkout

EX1005, FIG. 4D

Second, because the **Storefront** is displayed on a web site in a desktop browser or a distributed application, distinct from platform server 110, a POSITA would have understood that Johnston’s **shopping cart** (“checkout screen”) is provided on “the remote computing device.” EX1002, ¶92.

Third, a POSITA would have understood that, because the **shopping cart** is displayed in the **Storefront**, which is distributed by platform server 110 (“the

server”) (see element 1[e]), the platform server 110 also provides the **shopping cart**. EX1002, ¶93.

Therefore, Johnston discloses element 1[g]. *Id.*, ¶94.

i) 1[h]: “wherein the transaction processing service is configured to process a payment for a purchase of a product associated with the product listing, the purchase initiated from the checkout screen using the remote computing device.”

Johnston discloses element 1[h]. EX1002, ¶95.

First, as discussed for element 1[f], a buyer adds an item displayed in the **product listing** to a shopping cart by clicking on the “**Add to Cart**” button. EX1005, ¶261, Figure 4B. Johnston makes clear that “[p]roducts may be physical products or be in some intangible form.” *Id.*, ¶5. In other words, digital content such as a music file is “*a product*.” This is consistent with how the ’678 patent describes “product”: “each uploaded content file represents an item for promotion and distribution” and “[e]ach ‘item’ is made available as a ‘product’ for marketing purposes.” EX1001, 11:24–28. Thus, in Johnston, the item added from the **product listing** to the shopping cart is “*a product associated with the product listing*.” EX1002, ¶96.

Second, as discussed for element 1[g], Johnston’s **shopping cart** (“*the checkout screen*”) is provided on “*the remote computing device*” and allows a buyer to “purchase items.” EX1005, ¶254. Thereafter, when the buyer clicks on the

“Checkout” button (and signs in if not already), Johnston’s system prompts the buyer to select a payment method. *See id.*, ¶¶254–257. Thus, “*the purchase [is] initiated from the checkout screen using the remote computing device.*” EX1002, ¶97.

Third, Johnston discloses an exemplary interface of the Storefront, in Figure 4E, that provides the buyer with payment options to buy credits, which may then be used to purchase an item. EX1005, ¶257. As discussed for element 1[a], Johnston’s micro payment service 145 (“*the transaction processing service*”) allows “buyers to pay for products at low values or for small amounts of monies without incurring credit card or other third-party transaction fees.” *Id.*, ¶185. Johnston explains that “this is possible... through the use of OWJO Credits.” *Id.*, ¶186. Thus, using credits, Johnston’s micro payment service 145 “*is configured to process a payment*” for an item in the buyer’s shopping cart. EX1002, ¶98.

Welcome, rachel_bye

Checkout

Amount to be billed: 25.00

OWJO Account Balance: 0.00

PayPal

Top Up by Paypal

€5 OWJO Credits

Buy Now

€10 OWJO Credits

Buy Now

€20 OWJO Credits

Buy Now

€30 OWJO Credits

Buy Now

 Top Up by Mobile

🇮🇪 Ireland:

Top up by 2.00

Text OWJO01 to 50102

1. Service Charge

Top up by 4.00

Text OWJO01 to 50102

2. Service Charge

🇬🇧 UK:

Top up by 2.00

Text OWJO01 to 50102

1. Service Charge

Top up by 4.00

Text OWJO01 to 50102

2. Service Charge

Redeem Code:

Redeem

EX1005, FIG. 4E

Therefore, Johnston discloses element 1[h]. EX1002, ¶99.

Accordingly, Johnston renders obvious claim 1. *Id.*, ¶100.

2. Claim 2

“The system of claim 1, wherein the metadata includes a title or textual description.”

Johnston discloses the additional limitation of claim 2. As discussed for element 1[b], Johnston discloses encoding content metadata (“*the metadata*”) into a music file. See EX1005, ¶309. According to Dr. Mowry, a POSITA would have known that the metadata of a music track could include the title and/or a description of the music track. See, e.g., EX1003, 6:61–63 (“Media descriptive data 204... include descriptive text, such as title...”). Therefore, Johnston discloses “*the metadata includes a title or textual description.*” EX1002, ¶101.

3. Claim 3

“The system of claim 1, wherein the remote computing device is a smartphone.”

Johnston discloses the additional limitation of claim 3. For example, Johnston discloses an “**iPhone Client 107**”—“an iPhone/iTouch application or client agent executing in a native environment on **Apple iPhone/iTouch**.” EX1005, ¶135. Johnston explains that “the **iPhone client** enables a user to view (e.g., from a web site), download, install and/or operate a Storefront widget, for example to peruse and purchase items for sale.” *Id.*, ¶136. The iPhone is an exemplary “*remote computing device*” and is a well-known “*smartphone*.” See also *id.*, ¶137 (“The OWJO platform may include a plurality of client agents... constructed to operate or execute on... any type and form of mobile device, cell phone, personal digital assistant, etc.”). EX1002, ¶103.

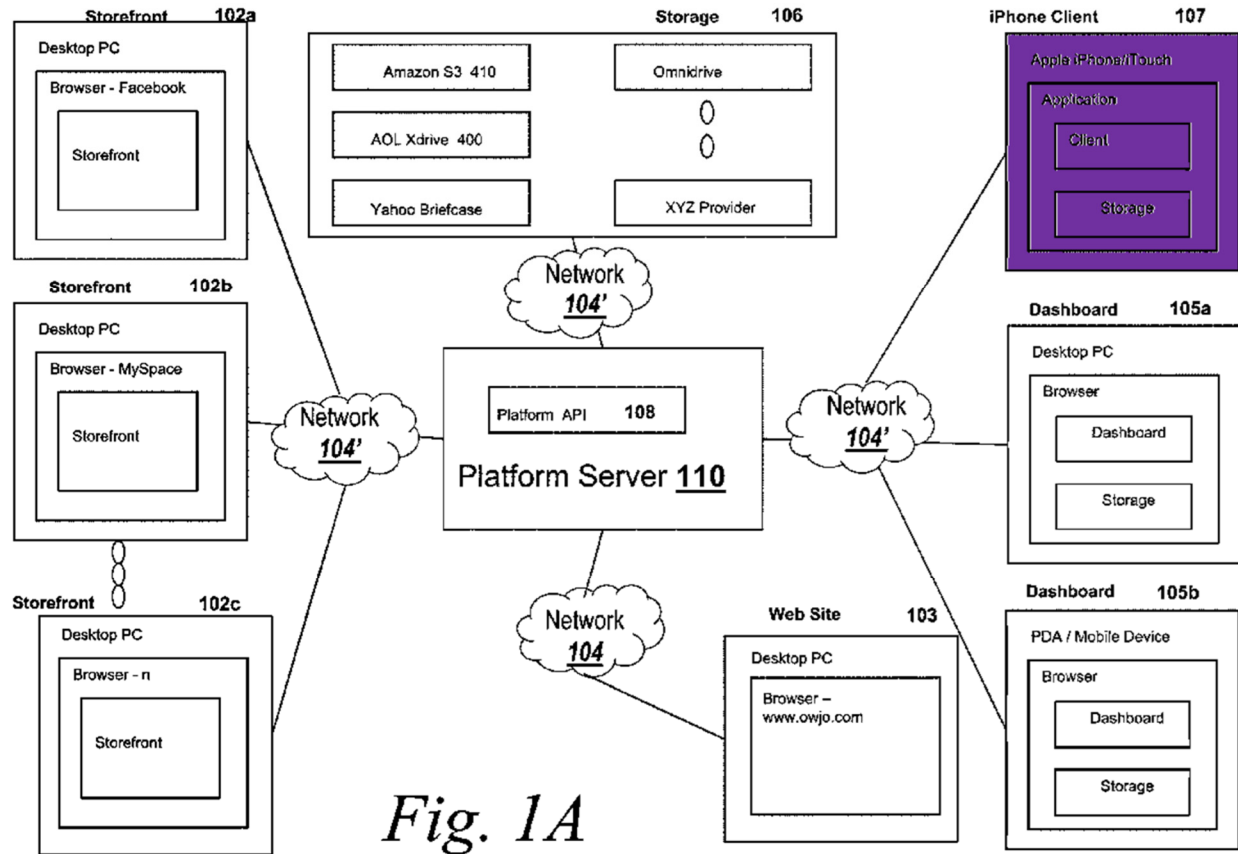


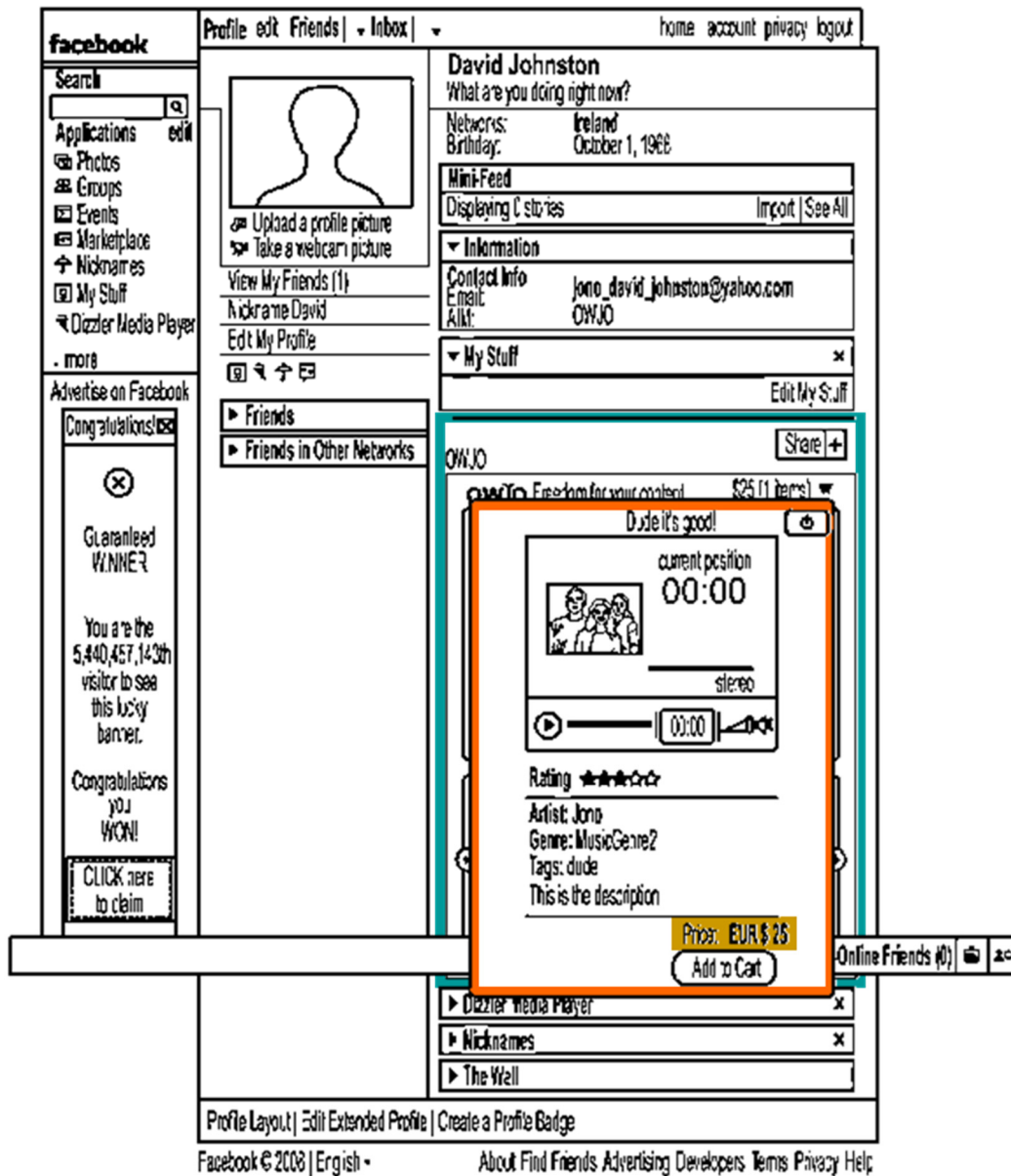
Fig. 1A

EX1005, FIG. 1A

4. Claim 4

“The system of claim 1, wherein the marketplace rule comprises one or more of: a price, sales campaign date, or geographic availability.”

Johnston discloses the additional limitation of claim 4. As discussed for element 1[d], Johnston’s **product listing** in the **Storefront** includes the “**Price: EUR \$ 25**” (“the marketplace rule”) of the music track. See EX1005, Figure 4B; see also *id.*, ¶¶161, 176. EX1002, ¶105.



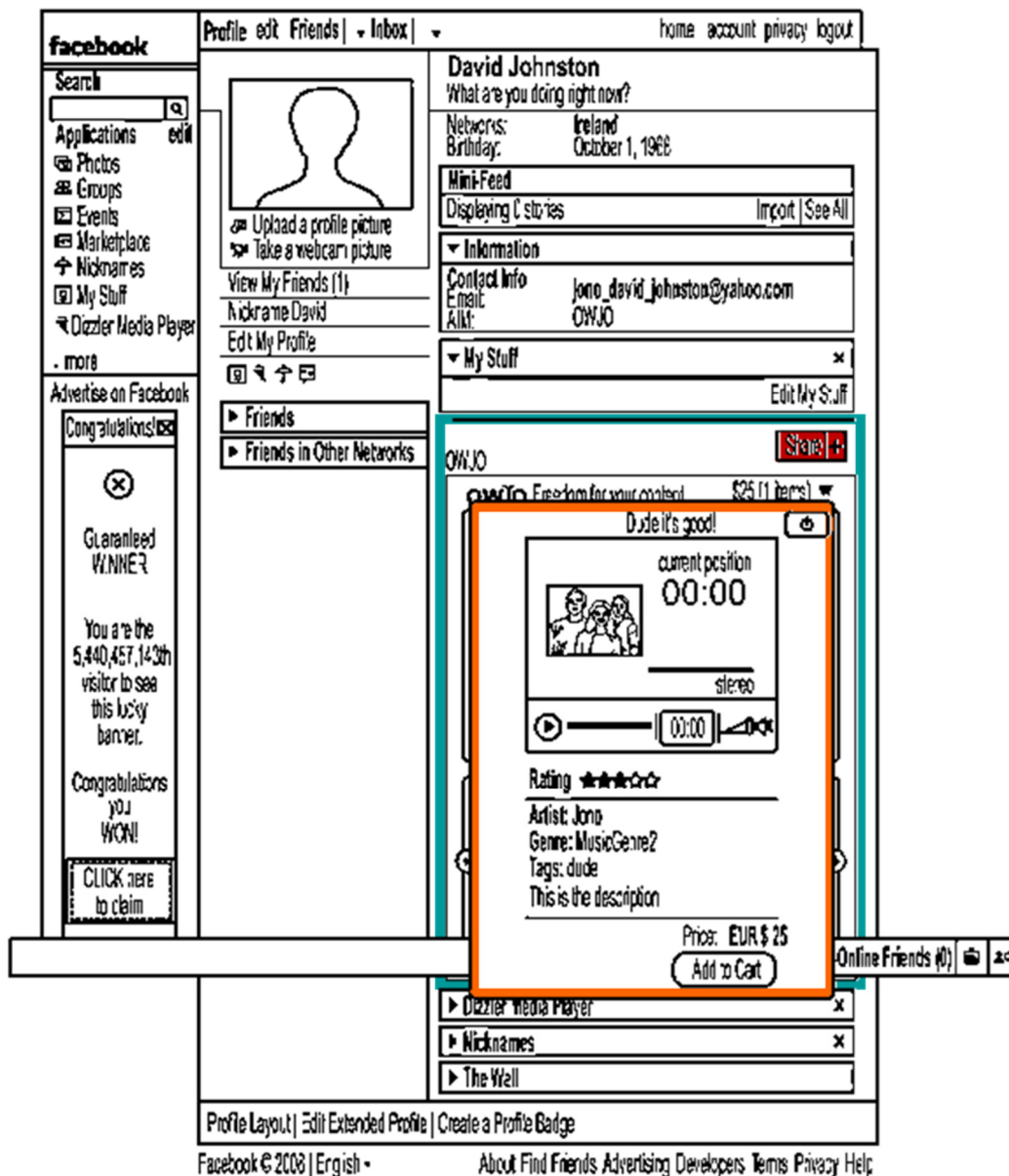
EX1005, FIG. 4B

5. Claim 5

“The system of claim 1, wherein the product listing includes a share link.”

Johnston renders obvious the additional limitation of claim 5. In Johnston’s Figures 4A–4C, the **Storefront** includes a **“Share”** link. Johnston explains that “[a]

seller can decide to promote the seller's OWJO **Storefront** to some or all of their contacts on Facebook or MySpace by clicking on the '**share**' link." EX1005, ¶286. As Dr. Mowry explains, a POSITA would have found it obvious to include a similar **share** link in every **product listing**. It was known before the '678 patent's priority date to include a share link in a product listing as disclosed, for example, by Chang. *See, e.g.*, EX1008, ¶43. A POSITA would have been motivated to do so to allow the seller to promote specific product listings from the seller's Storefront rather than the entire Storefront. Implementing Johnston's Storefront such that every product listing includes a share link would have been well within the knowledge and skillset of a POSITA and would have been effected using basic computer programming principles. EX1002, ¶107.



EX1005, FIG. 4B

6. Claim 6

“The system of claim 5, wherein when the server receives an indication that the share link has been selected activated [sic] by the remote computing device, the server distributes the product listing to a social media network.”

Johnston renders obvious the additional limitation of claim 6. For example, referring to Figure 8B, Johnston discloses that “[a] seller can decide to promote the seller’s OWJO **Storefront** to some or all of their contacts on Facebook or MySpace by clicking on the ‘**share**’ link.” EX1005, ¶286. As Johnston illustrates in Figure 8B, when a seller **shares** the seller’s Storefront to the seller’s contacts on Facebook or MySpace, **platform server 110** (“*the server*”) **receives an indication that the share link has been selected** by the seller at “*the remote computing device*” (displaying Storefront 102a or 102b on the left of Figure 8B). **Platform server 110** then **distributes** the **Storefront** to the social media network (*e.g.*, “Facebook” or “MySpace”) of the seller’s contacts (on the right of Figure 8B). As discussed above for claim 5, a POSITA would have found it obvious to include a similar **share** link in every **product listing** in the Storefront. *See, e.g.*, EX1008, ¶43. As such, just like **platform server 110** distributes the Storefront, when it receives an indication that the seller has selected the share link in a product listing, it would distribute the product listing to the social media network of the seller’s contacts. EX1002, ¶109.

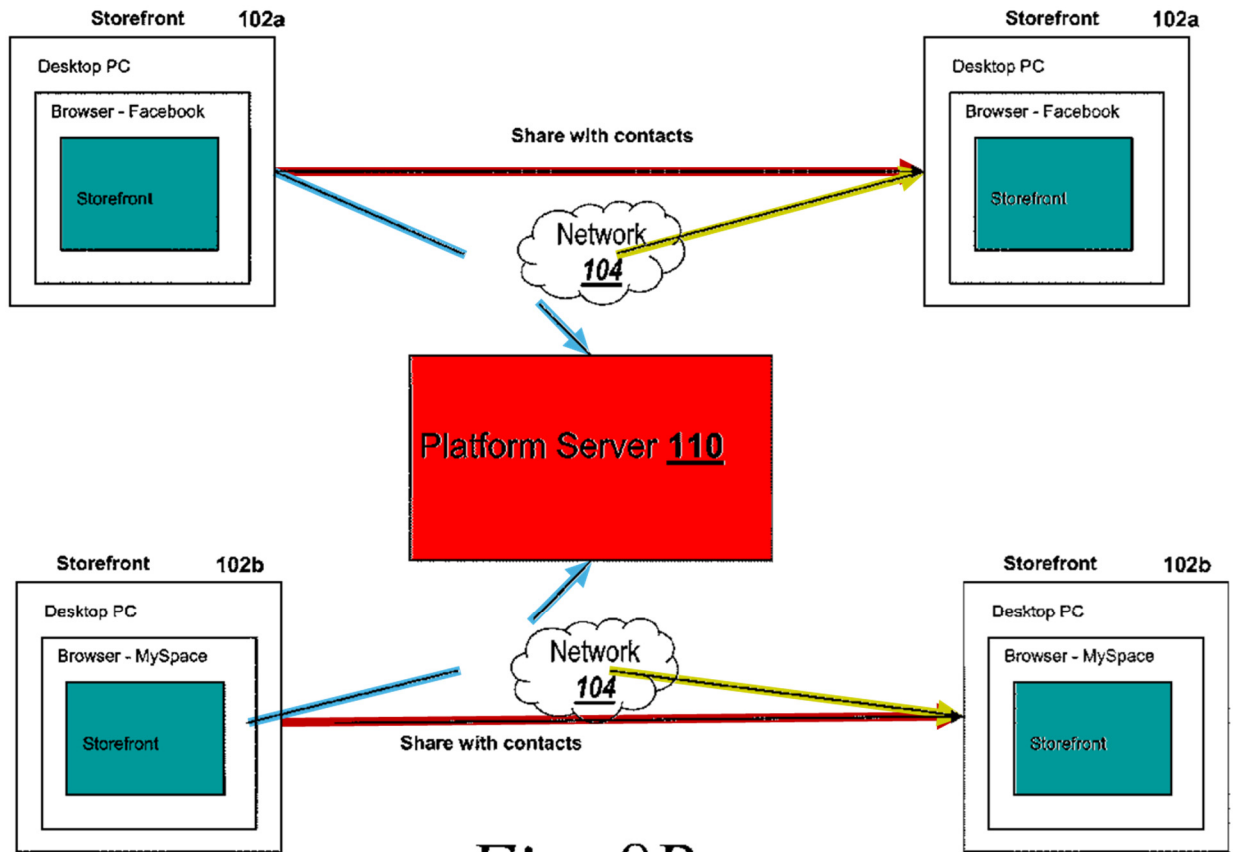


Fig. 8B

EX1005, FIG. 8B

7. Claim 7

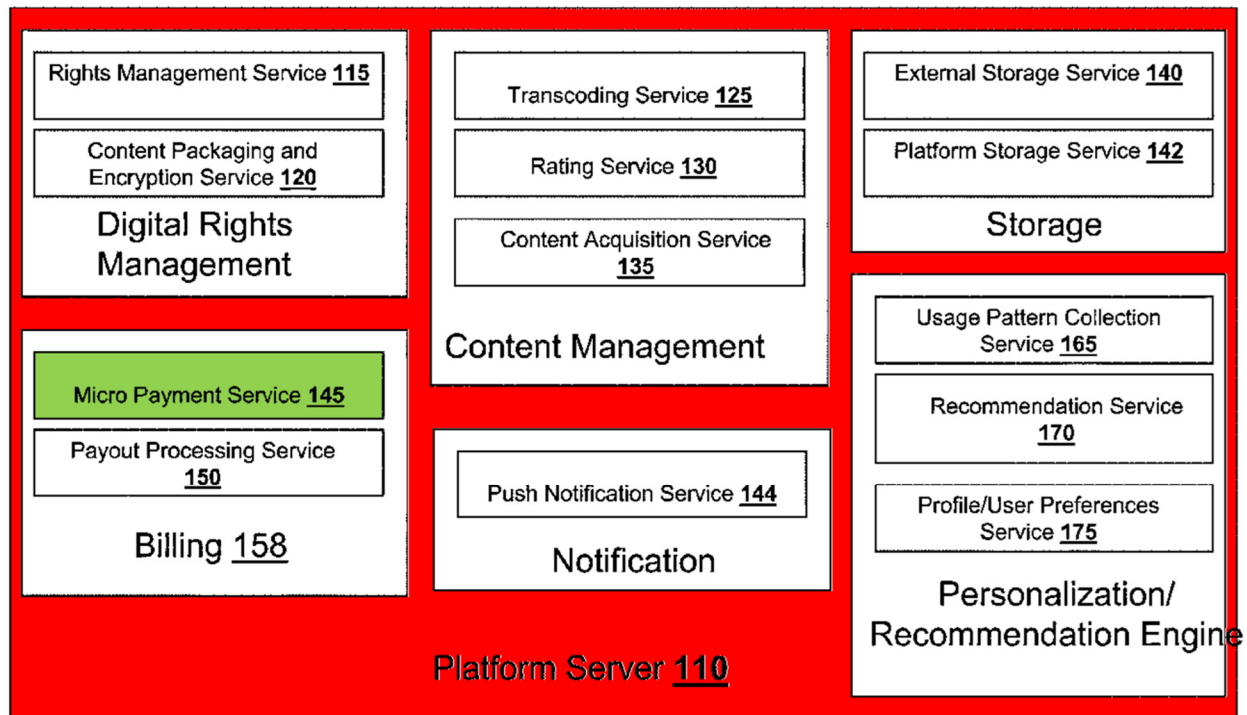
“The system of claim 1, wherein the transaction processing service comprises a managed service in communication with the server.”

Johnston renders obvious the additional limitation of claim 7. EX1002, ¶111.

First, Johnston discloses that **micro payment service 145** (“the transaction processing service”) “provides a means for sellers and buyers to pay for products at low values or for small amounts of monies without incurring credit card or other third-party transaction fees.” EX1005, ¶185. Johnston explains that “this is

possible... through the use of OWJO Credits” and that, in some embodiments, “transacting with OWJO Credits may incur a one-time fee or periodic fees (e.g., indirectly through OWJO membership fees), a low fee or indirect service charges (e.g., via OWJO revenue-sharing on each transaction[]).” *Id.*, ¶186. In other words, **micro payment service 145** is a service managed by OWJO and thus “a managed service.” EX1002, ¶112.

Second, in Figure 1C, **micro payment service 145** is shown as part of the billing module 158, which is part of platform server 110 (“the server”). A POSITA would have found it obvious to implement **micro payment service 145** such that it is separate from, but in communication with, platform server 110. It was well-known before the ’678 patent’s priority date for billing database transaction functionality to be performed separately from, but in communication with, web server processing. For example, a June 2010 paper by Kossmann et al. reported that six out of seven services provided by “major vendors” of cloud computing perform database transaction functionality separately from web server processing. *See* EX1024, Abstract, Table 1; EX1032. EX1002, ¶113.



EX1005, FIG. 1C

8. Claim 8

“The system of claim 1, wherein the server comprises one or more cloud-based servers.”

Johnston renders obvious the additional limitation of claim 8. Johnston’s **platform server 110** “may comprise... a cluster of **one or more application servers** or nodes.” EX1005, ¶115. Johnston discloses that **platform server 110** communicates with client devices (e.g., “Desktop PC” and “Apple iPhone/iTouch”) over networks 104 and 104’, which can be “a wide area network (WAN), such as the Internet.” *Id.*, ¶¶114, 143. It was well-known before the ’678 patent’s priority date that a server that communicates with client devices over a WAN or the Internet could be a cloud-based server. *See, e.g.*, EX1014, ¶179 (“client 1510 and cloud-based

server 1550, which are separated by WAN 1540”), Figure 15; EX1015, ¶3 (“Cloud computing is a style of computing in which computing resources such as application programs and file storage are remotely provided over the Internet, typically through a web browser.”), ¶11 (“FIG. 1 is a schematic diagram illustrating information exchange between a cloud-enabled computer [100] and a cloud-based server [130] offering a cloud-based service.”), Figure 1. Thus, a POSITA would have found it obvious that **platform server 110** could comprise “*one or more cloud-based servers.*” EX1002, ¶115.

9. Claim 9

a) 9[preamble]: “A system for generating distributing multimedia content over a network, comprising:”⁵

Regardless of whether the preamble is limiting, Johnston discloses it for at least the same reasons discussed for element 1[preamble]. EX1002, ¶117.

b) 9[a]: “a server configured to control a transaction processing service; and”

Johnston discloses element 9[a] for at least the same reasons discussed for element 1[a]. EX1002, ¶118.

⁵ Because “*generating distributing*” or “*generating*” multimedia content over a network does not make sense technically, “*generating distributing*” is interpreted as simply “*distributing.*” See, e.g., element 1[preamble]. EX1002, ¶117.

c) 9[b]: “a storage resource communicatively coupled to the server, and configured to store an item, wherein the item comprises an identifier, multimedia content, and metadata,”

Johnston discloses element 9[b] for at least the same reasons discussed for element 1[b]. EX1002, ¶119.

d) 9[c]: “wherein the server is configured to: receive the item from the storage resource;”

Johnston discloses element 9[c] for at least the same reasons discussed for element 1[c]. EX1002, ¶120.

e) 9[d]: “[wherein the server is configured to:] execute a widget builder resource configured to generate a product listing, wherein the product listing includes: (i) information associated with the item, (ii) a marketplace rule, and (iii) a clickable buy button;”

Johnston discloses element 9[d] for at least the same reasons discussed for element 1[d]. EX1002, ¶121.

f) 9[e]: “[wherein the server is configured to:] distribute the product listing to a web site operated by the server or to a distributed application not operated by the server based on the marketplace rule;”

Johnston renders obvious element 9[e] for at least the same reasons discussed for element 1[e]. Element 9[e] further requires that the web site be “operated by the server” **or** the distributed application “not operated by the server.” Johnston discloses that the distributed application is “not operated by the server.” As discussed for element 1[e], Johnston’s iPhone/iTouch application or client agent is

“*a distributed application.*” Johnston discloses “an iPhone/iTouch **application** or client agent executing in a native environment on Apple iPhone/iTouch.” EX1005, ¶135. In other words, Johnston’s iPhone/iTouch application or client agent is operated by the native operating system, **not** by platform server 110 (“*the server*”). EX1002, ¶122.

Therefore, Johnston discloses element 9[e]. *Id.*, ¶123.

g) 9[f]: “[wherein the server is configured to:] receive an indication that the clickable buy button has been selected by a remote computing device; and”

Johnston discloses element 9[f] for at least the same reasons discussed for element 1[f]. EX1002, ¶124.

h) 9[g]: “[wherein the server is configured to:] provide a checkout screen to the remote computing device,”

Johnston discloses element 9[g] for at least the same reasons discussed for element 1[g]. EX1002, ¶125.

i) 9[h]: “wherein the transaction processing service is configured to process a payment for a purchase of a product associated with the product listing, the purchase initiated from the checkout screen using the remote computing device.”

Johnston discloses element 9[h] for at least the same reasons discussed for element 1[h]. EX1002, ¶126.

Therefore, Johnston renders claim 9 obvious. EX1002, ¶127.

10. Claim 10

“The system of claim 9, wherein the metadata includes a title or textual description.”

Johnston discloses the additional limitation of claim 10 for at least the same reasons discussed for claim 2. EX1002, ¶128.

11. Claim 11

“The system of claim 9, wherein the remote computing device is a smartphone.”

Johnston discloses the additional limitation of claim 11 for at least the same reasons discussed for claim 3. EX1002, ¶130.

12. Claim 12

“The system of claim 9, wherein the marketplace rule comprises one or more of: a price, sales campaign date, or geographic availability.”

Johnston discloses the additional limitation of claim 12 for at least the same reasons discussed for claim 4. EX1002, ¶132.

13. Claim 13

“The system of claim 9, wherein the product listing includes a share link.”

Johnston renders obvious the additional limitation of claim 13 for at least the same reasons discussed for claim 5. EX1002, ¶134.

14. Claim 14

“The system of claim 13, wherein when the server receives an indication that the share link has been selected by the remote

computing device, the server distributes the product listing to a social media network.”

Johnston renders obvious the additional limitation of claim 14 for at least the same reasons discussed for claim 6. EX1002, ¶136.

15. Claim 15

a) 15[preamble]: “A system for generating distributing multimedia content over a network, comprising:”⁶

Regardless of whether the preamble is limiting, Johnston discloses it for at least the same reasons discussed for element 1[preamble]. EX1002, ¶138.

b) 15[a]: “a server configured to control a transaction processing service; and”

Johnston discloses element 15[a] for at least the same reasons discussed for element 1[a]. EX1002, ¶139.

c) 15[b]: “a storage resource communicatively coupled to the server and configured to store an item, wherein the item comprises an identifier, multimedia content, and metadata,”

Johnston discloses element 15[b] for at least the same reasons discussed for element 1[b]. EX1002, ¶140.

d) 15[c]: “wherein the server is configured to: receive the item from the storage resource;”

Johnston discloses element 15[c] for at least the same reasons discussed for element 1[c]. EX1002, ¶141.

⁶ See n. 5.

e) 15[d]: “[wherein the server is configured to:] execute a widget builder resource configured to generate a product listing, wherein the product listing includes: (i) information associated with the item, (ii) a marketplace rule, and (iii) a clickable buy button;”

Johnston discloses element 15[d] for at least the same reasons discussed for element 1[d]. EX1002, ¶142.

f) 15[e]: “[wherein the server is configured to:] distribute the product listing to a web site or to a social media network based on the marketplace rule;”

Johnston renders obvious element 15[e] for at least the same reasons discussed for element 1[e]. EX1002, ¶143.

g) 15[f]: “[wherein the server is configured to:] receive an indication that the clickable buy button has been selected by a remote computing device; and”

Johnston discloses element 15[f] for at least the same reasons discussed for element 1[f]. EX1002, ¶144.

h) 15[g]: “[wherein the server is configured to:] provide a checkout screen to the remote computing device for purchasing a product associated with the product listing,”

Johnston discloses element 15[g] for at least the same reasons discussed for elements 1[g] and 1[h]. EX1002, ¶145.

i) 15[h]: “wherein transaction processing service is configured to process a payment for a purchase of the product initiated from the checkout screen using the remote computing device.”

Johnston discloses element 15[h] for at least the same reasons discussed for element 1[h]. EX1002, ¶146.

Therefore, Johnston renders obvious claim 15. EX1002, ¶147.

16. Claim 16

“The system of claim 15, wherein the metadata includes a title or textual description.”

Johnston discloses the additional limitation of claim 16 for at least the same reasons discussed for claim 2. EX1002, ¶148.

17. Claim 17

“The system of claim 15, wherein the remote computing device is a smartphone.”

Johnston discloses the additional limitation of claim 17 for at least the same reasons discussed for claim 3. EX1002, ¶150.

18. Claim 18

“The system of claim 15, wherein the marketplace rule comprises one or more of: a price, sales campaign date, or geographic availability.”

Johnston discloses the additional limitation of claim 18 for at least the same reasons discussed for claim 4. EX1002, ¶152.

19. Claim 19

“The system of claim 15, wherein the product listing includes a share link.”

Johnston renders obvious the additional limitation of claim 19 for at least the same reasons discussed for claim 5. EX1002, ¶154.

20. Claim 20

“The system of claim 19, wherein when the server receives an indication that the share link has been selected by the remote computing device, the server distributes the product listing to a second remote computing device.”

Johnston renders obvious the additional limitation of claim 20 for at least the same reasons discussed for claim 6. EX1002, ¶156.

B. Ground 2: Claims 1–4, 7–12, and 15–18 are Obvious over Wiser and Dierks

1. Claim 1

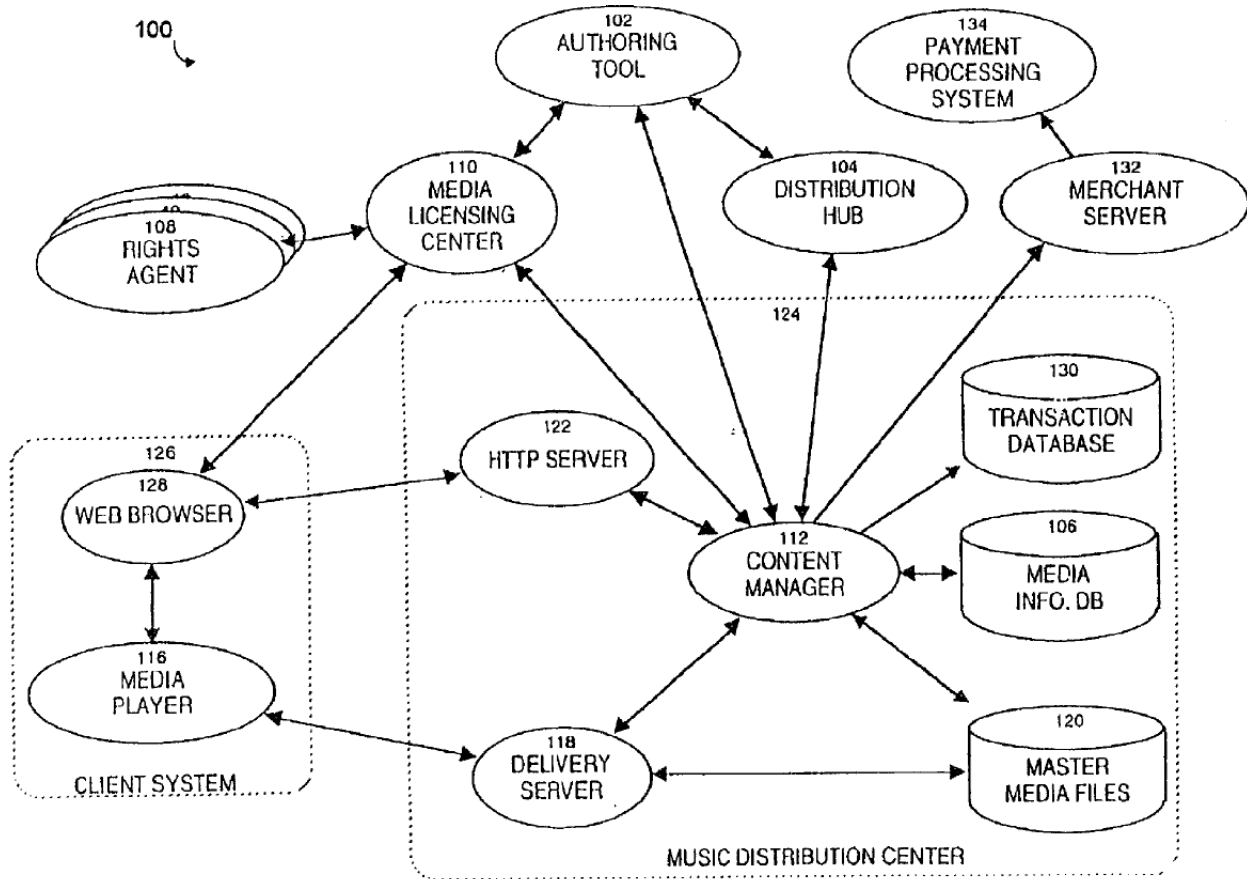
a) 1[preamble]⁷

Regardless of whether the preamble is limiting, Wiser discloses it. For example, Wiser discloses “[a] computer implemented **online music distribution system** [that] provides **for the secure delivery of audio data and related media**, including text and images, **over a public communications network.**” EX1003, Abstract; *see also id.*, 5:46–48. Audio data (or music) and related media (including text and images) constitute “*multimedia content.*” EX1002, ¶158.

Wiser illustrates, in Figure 1, an embodiment of its online music distribution system—system 100—that “includes a music distribution center 124 which operates

⁷ See Appendix of Claim Listing.

with any number of client systems 126, only one of which is illustrated for convenience.” *Id.*, 5:49–50. EX1002, ¶159.



EX1003, FIG. 1

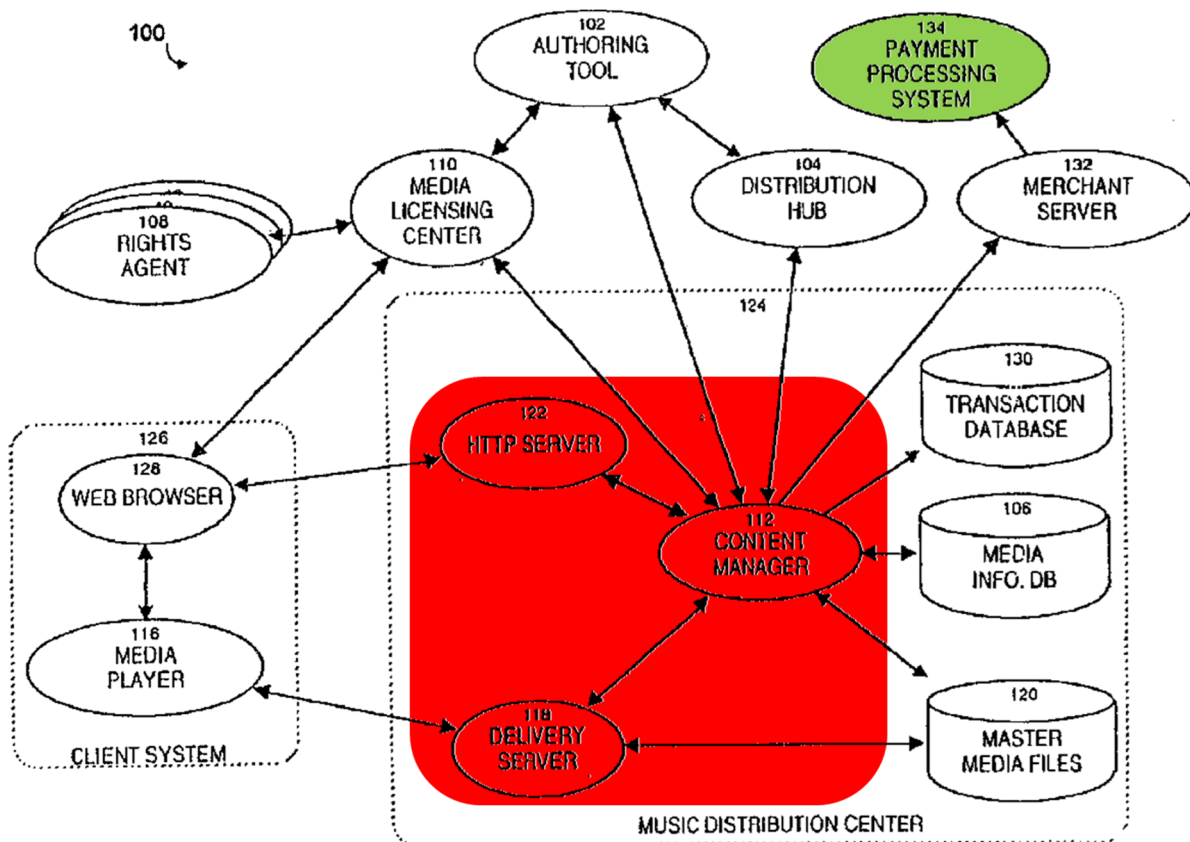
Therefore, Wiser discloses the preamble of claim 1. EX1002, ¶160.

b) 1[a]

Wiser discloses element 1[a]. EX1002, ¶161.

First, Wiser discloses, in system 100, a music distribution center 124 that “includes a content manager 112, and at least one delivery server 118, an HTTP (HyperText Transfer Protocol) server 122.” EX1003, 5:51–54. The combination of

content manager 112, delivery server 118, and HTTP server 122 corresponds to “a server.” It was well-known before the ’678 patent’s priority date that a server could be a cluster of servers and computing devices running computer programs for client systems. *See, e.g.*, EX1005, ¶115 (“The Server 110... may comprise a single server, a server farm or a cluster of one or more application servers or nodes.”); EX1006, ¶62 (“The merchant server or the third-party server may comprise a computer, server, or combination or network of computing devices such as a servers, computers, or processors, which in combination perform the operations described herein.”). EX1002, ¶162.



EX1003, FIG. 1

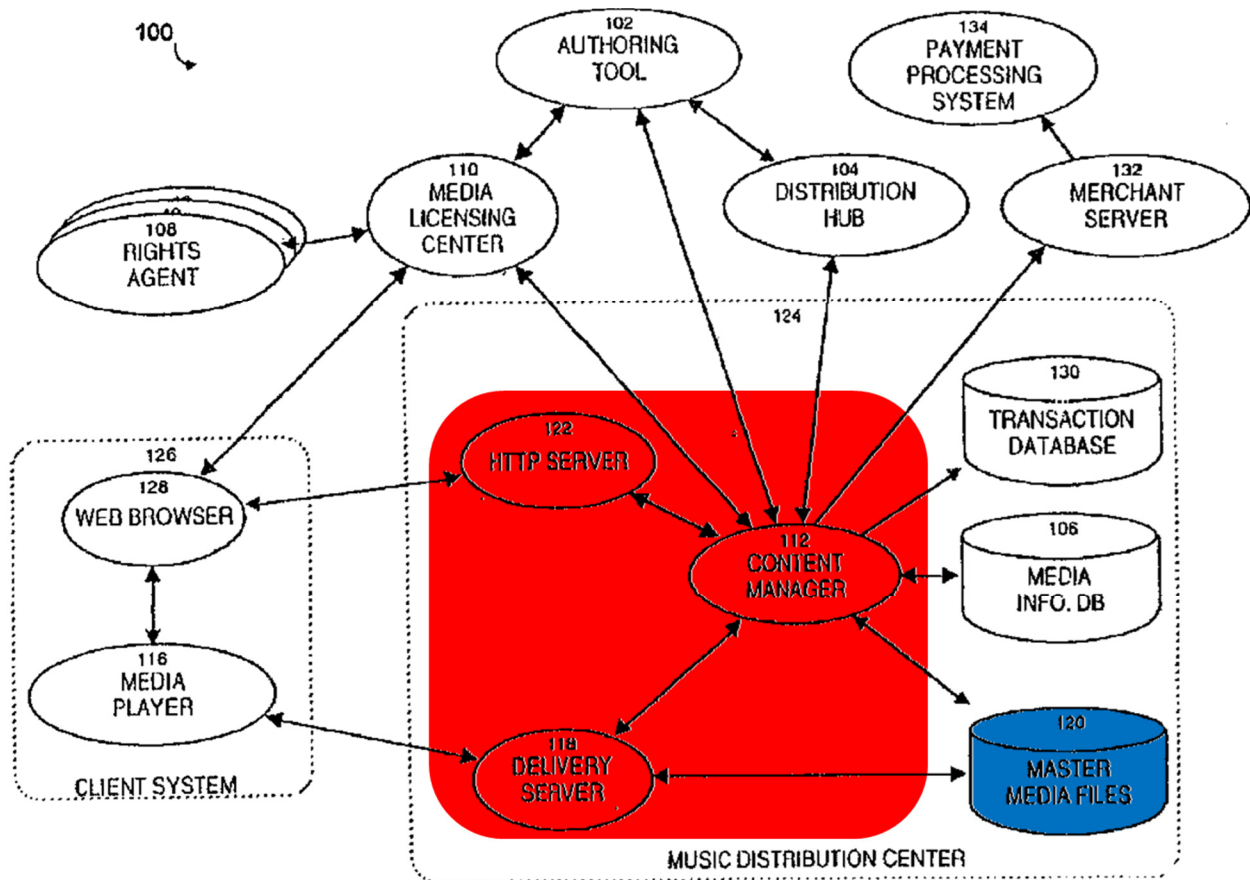
Second, Wiser explains that **content manager 112** (“*the server*”) handles the administration and management of (*i.e.*, is “*configured to control*”) all purchases and other transactions. *Id.*, 6:34–36. As Wiser illustrates in Figure 1, **content manager 112** is in communication with merchant server 132, which in turn interfaces with **payment processing system 134**. *See id.*, 5:60–61. **Payment processing system 134** corresponds to “*a transaction processing service.*” *See id.*, 11:12–15 (“The payment processing systems 134 are conventional payment authorization systems, such as credit card authorization systems or debit card payment authorization systems.”); *cf.*, EX1001, 5:47–50 (“transaction processing service 112 for the provision of credit card, debit card or bank account information and completion of the purchase transaction”). EX1002, ¶163.

Therefore, Wiser discloses element 1[a]. EX1002, ¶164.

c) 1[b]

Wiser discloses element 1[b]. EX1002, ¶165.

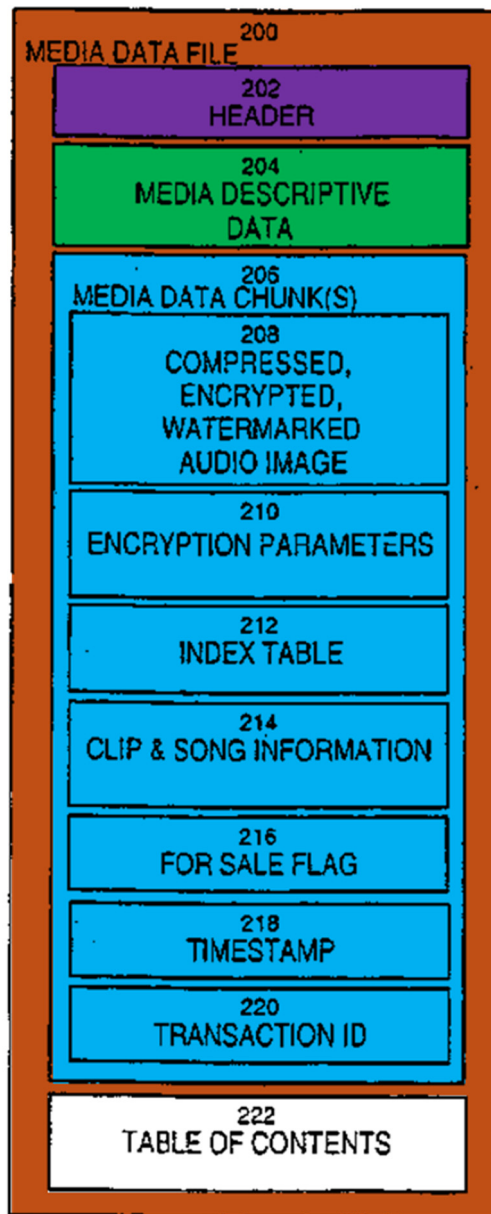
First, Wiser’s system 100 includes **master media file system 120** in communication with **content manager 112 and delivery server 118** (“*the server*”). EX1003, Figure 1; *see also id.*, 14:56–57, 19:31–32. EX1002, ¶166.



EX1003, FIG. 1

Second, **master media file system 120** stores at least one media data file 200. *Id.*, 6:52–53 (“The media data files 200 are stored in the master media file system 120.”), 10:51–56 (“media data files 200 to be delivered over the network to the content manager 112 for storage in the master media data file system 120”). Thus, **master media file system 120** is a “storage resource.” Moreover, media data file 200 is “an item.” Cf. EX1001, 6:37–38 (“the items include individual songs, song releases, or entire song catalogues”), 11:25–26 (“each uploaded content file represents an item for promotion and distribution”). EX1002, ¶167.

Third, as Wiser illustrates in Figure 2, **media data file 200** includes (i) **header 202**, (ii) **media data chunk(s) 206**, and (iii) **media descriptive data 204**. EX1002, ¶168.



EX1003, FIG. 2

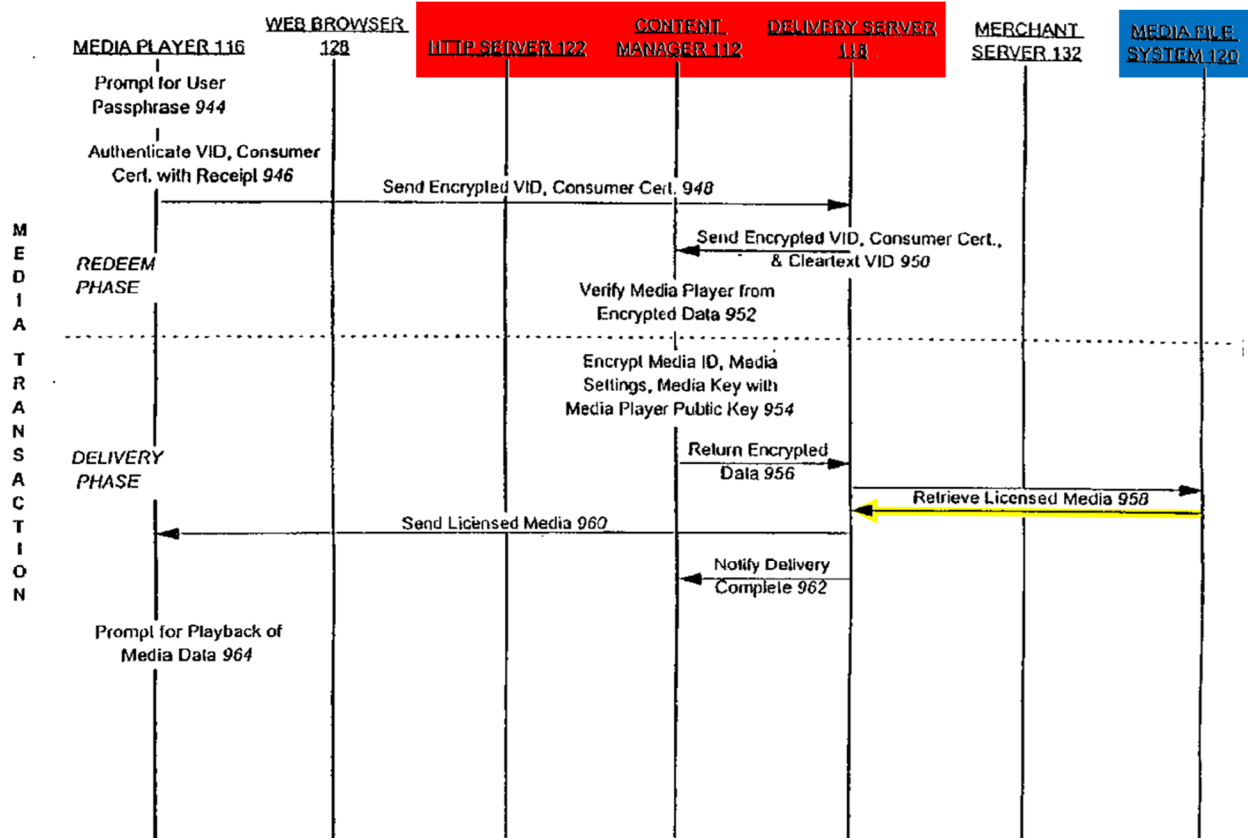
Wiser explains that **header 202** “includes a file format version, the location (offset) of the table of contents 222 in the file, and security information, such as authentication information including digital signature of data extracted from the file.” *Id.*, 6:56–60. **Header 202** identifies media data file 200 and is thus “an identifier.” **Media descriptive data 204** “include descriptive text, such as title, artist, lyrics, and liner notes, promotional art image data, and cover art image data” associated with media data file 200—data about data, *i.e.*, “*metadata*.” *Id.*, 6:61–64. **Media data chunk 206** includes *inter alia* compressed, encrypted, watermarked audio image 208, which “encodes either the entire song file or a portion thereof.” *Id.*, 7:6–12. Thus, **media data chunk 206** corresponds to “*multimedia content*.” EX1002, ¶169.

Therefore, Wiser discloses element 1[b]. EX1002, ¶170.

d) 1[c]

Wiser discloses element 1[c]. As discussed above, **master media file system 120** (“*the storage resource*”) is communicatively coupled to **content manager 112 and delivery server 118** (“*the server*”). Referring to Figure 9b to describe process 900 of purchasing media data file 200 (“*the item*”), Wiser further discloses that, at step 958, **delivery server 118** retrieves (arrow highlighted in yellow) the media from **master media file system 120** to be sent to media player 116 of client system 126.

See EX1003, 19:31–41. In other words, **delivery server 118** (“the server”) is configured to “receive the item from the storage resource.” EX1002, ¶171.



EX1003, FIG. 9b

Therefore, Wiser discloses element 1[c]. EX1002, ¶172.

e) 1[d]

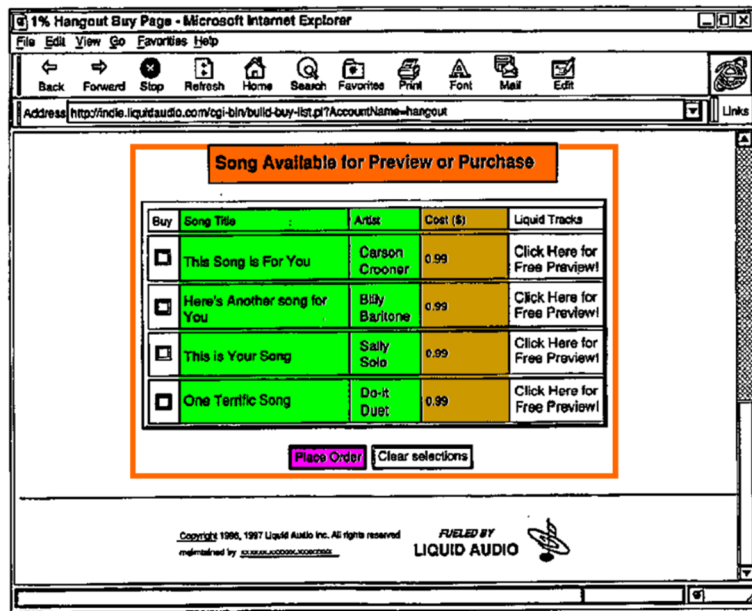
Wiser alone, or in combination with Dierks, renders obvious element 1[d].

EX1002, ¶173.

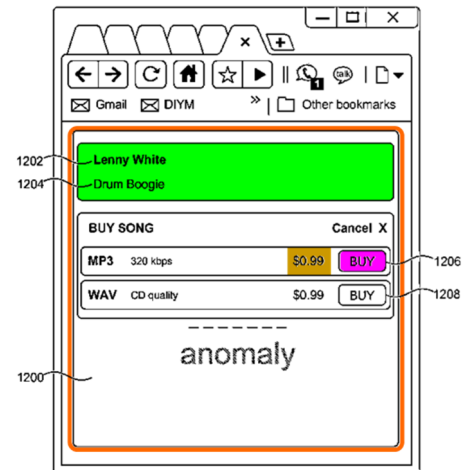
(1) *Wiser alone*

For example, Wiser discloses a “**preview listing**” (“a product listing”) in Figure 8, reproduced below alongside the ’678 patent’s Figure 12. EX1003, 16:30–

33. Like the '678 patent's product listing, Wiser's **preview listing** is displayed on or embedded into a web site displayed in a web browser—for example, web browser 128 of client system 126. *See id.* (“the user will be viewing in the Web browser 128 some form of menu, catalogue, index or other **listing of music and media available for purchase**, and may be similar in form to the **preview listing** of FIG. 8”). The **preview listing** includes (i) information associated with at least one song or media data file 200 such as the “**Song Title**” and “**Artist**” (“*information associated with the item*”), (ii) the “**Cost**” of the song (“*a marketplace rule*”; *cf.* EX1001, claim 4 (“the marketplace rule comprises one or more of: a price...")), and (iii) a “**Place Order**” button (“*a clickable buy button*”). EX1003, Figure 8; *see also id.*, 16:33–36 (“From the user's Web browser 128 a purchase request for a specific song is sent 902 to the HTTP server 122, for example by the user clicking on a “**Buy It**” **button.**”). EX1002, ¶174.



EX1003, FIG. 8



EX1001, FIG. 12

Wiser is silent as to how its **preview listing** is generated. However, in view of Wiser's teachings, a POSITA would have found it obvious to implement Wiser's **content manager 112, delivery server 118, and/or HTTP server 122** ("the server") to use a widget builder resource or the like to generate Wiser's **preview listing**. Wiser makes clear that the "rapid development of the Internet and the World Wide Web" has enabled online commerce. EX1003, 1:15–33. Wiser is particularly concerned with both the online purchase and delivery phases of distributing music created by a multitude of artists. *See id.*, 1:34–37 ("In contrast to conventional online purchase-off-line distribution systems, a complete system for the online distribution of digital media, such as digital audio, would provide online support for both the purchase and delivery phases."), 10:51–56 ("In order to obtain media data files 200

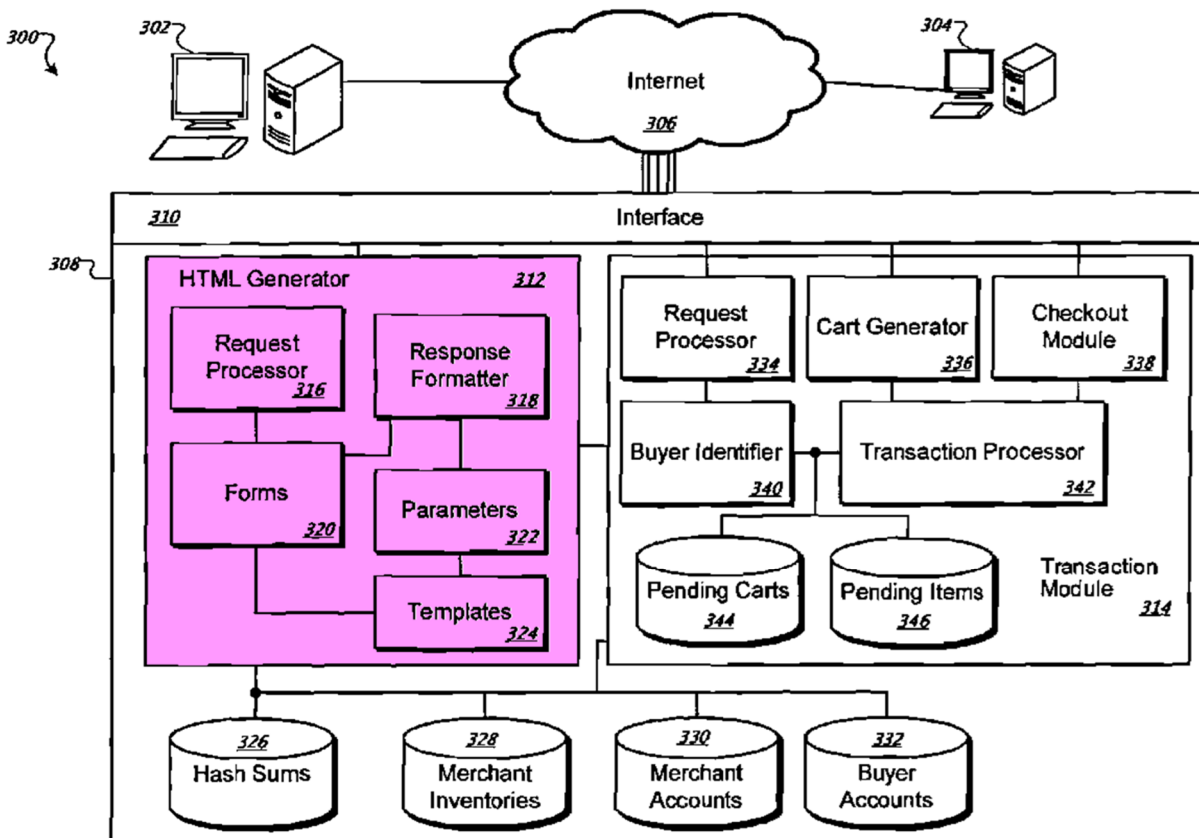
for distribution, the authoring tools 102 are used by individual artists to create the audio data and associated media data in the media data files 200 to be delivered over the network to the content manager 112 for storage in the master media data file system 120.”). A POSITA would have known that it would be inefficient and impractical to write unique code to generate a product listing for every media data file 200 or for a group of media data files by every artist. Instead, a POSITA would have found it obvious to create a template or a tool (“*a widget builder resource*”) that can be populated with information associated with every media data file 200 or group of media data files by an artist to readily generate a product listing that has a predetermined format and structure. Doing so was well-known in the art prior to the ’678 patent’s priority date, for example, as taught by Dierks and as discussed next. EX1002, ¶175.

(2) *Combination of Wiser and Dierks*

To the extent PO contends that Wiser alone does not render obvious element 1[d] because Wiser does not explicitly disclose “*a widget builder resource*,” the combination of Wiser and Dierks renders it obvious. EX1002, ¶176.

First, Dierks discloses an e-commerce system 300 that includes an **HTML generator 312** that “is configured to receive parameters regarding items to be sold by vendors and to **generate code, such as HTML or XHTML, for the vendors to include in their web pages, to generate controls for making ordering and**

selection of the items easier for visitors to the sites.” EX1004, ¶¶60, 62, Figure 3; *cf.* EX1001, 8:40–50 (“The buy buttons 310 are generated by content owners using the widget builder resource component 300 and linked to web widgets. The buy buttons 310 can be customized and distributed to online resources on the Internet, on mobile communication networks or on other computer networks for use in promoting the various groupings of multimedia content available from a content owner. Once a buy button 310 is clicked or selected by a consumer, it will activate its linked web widget and take the consumer to a checkout screen in the web widget.”). EX1002, ¶177.



EX1004, FIG. 3

Dierks's **HTML generator 312** includes a forms module 320 that serves a form that allows a requester to “provide information about an item the requester hopes to offer for sale, such as a description and price for the item.” *Id.*, ¶63. The supplied information is stored in the parameters module 322. *Id.*, ¶64. Dierks explains that the **HTML generator 312** “may access generic HTML code from templates module 324” and “[b]y combining the template information with the supplied parameters in a conventional manner, the **HTML generator 312** may produce mark-up code for the user that the user can employ to provide payment processing services on their web site.” *Id.* EX1002, ¶178.

Second, Dierks goes on to disclose an exemplary interface, illustrated in Figure 4, that “presents a user with an easy, step-by-step process for entering relevant information and obtaining the code.” EX1004, ¶71. Dierks explains that (i) radio buttons 402 and 404 allow the user to choose the type of “purchasing button” (“*clickable buy button*”), (ii) “[t]ext entry box 408 receives entry of a product name... and text entry box 412 receives a product description” (“*information associated with the item*”), and (iii) “text entry box 410 receives a product price” (“*a marketplace rule*”). *Id.*, ¶¶71, 73; *see also id.*, ¶73 (“Such entries may be coded along with the button, so as to be displayed on the vendor’s web page with the button...”). For example, the generated code is displayed in area 418 and may be

“cut-and-pasted [(i.e., embedded)] into the user’s web page.” *Id.*, ¶174. EX1002, ¶179.

Mozilla Firefox - MyCheckout 400

https://www.mycheckout.com/Merchant/8675309/CreateItemCode/

1. Choose a button type.

☒ Basic Button 402 ☐ Button with Options 404

Select this button type to offer different item options, such as sizes or colors.

2. Choose a button style.

My web page has a 406 background.

3. Describe your item.

Item Name: 408 Price: 410 USD

Item Description: 412

414

Insert this code for shopping cart:

```
<script type="text/javascript" src="https://www.mycheckout.com/shoppingcart.js?sellerId=8675309"></script><span id="mycheckout_status_bar"></span>
```

416

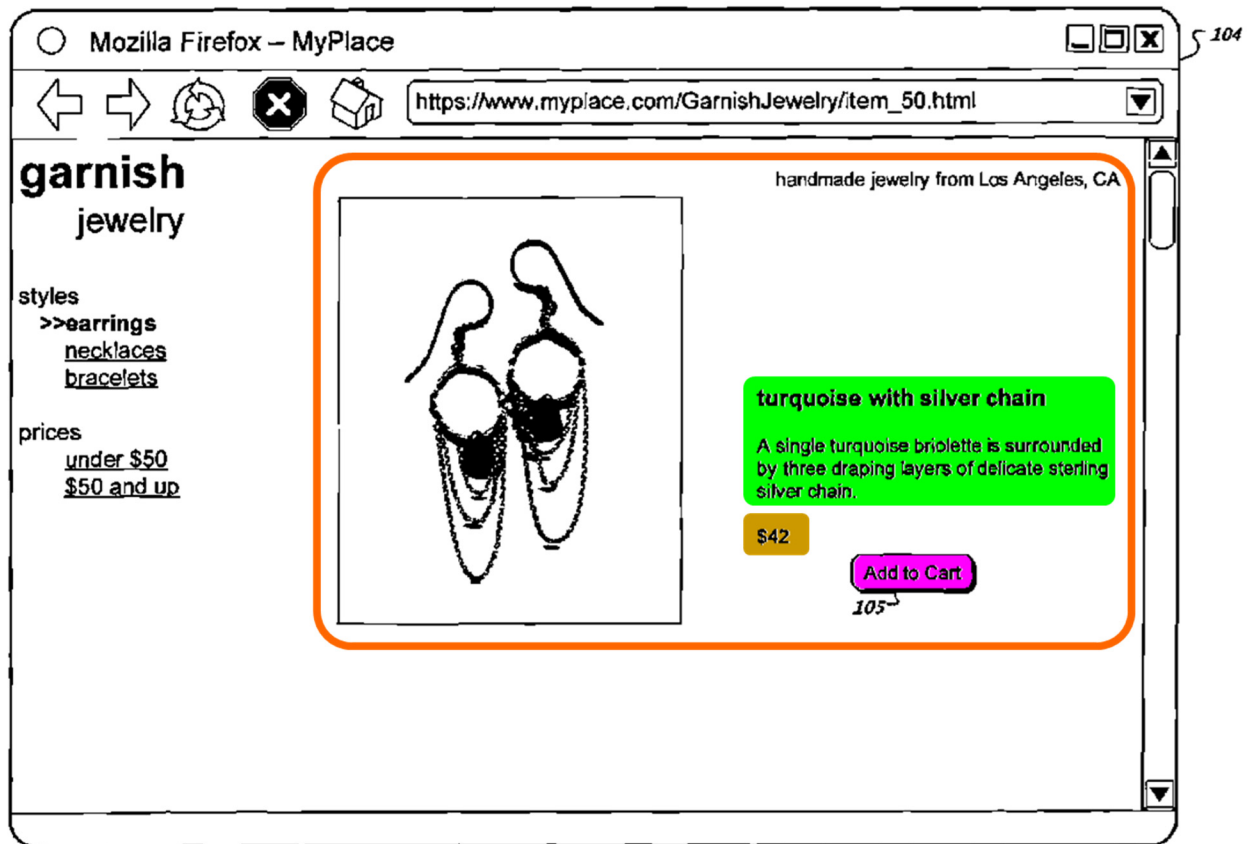
Insert this code for add to cart button:

```
<form action="https://www.mycheckout.com/Merchant/8675309/add" onsubmit="return false;" method="post"><input type="hidden" name="item" value="PD94bVWgdMvYc2lvbj0iMS4wliBlbmNvZGluZz0iVVRGLTgiPz4NCjxJdGVtIHhtbG5zPSJodHRwOi8vY2hiY2tvdXQuZ29vZ2xlLmNvbS9zY2hibWEvMil+DQogIDxxdWFudGloT4xPC9xdWFudGloT4NCiAgPHVuaXQ
```

418

EX1004, FIG. 4

Dierks’s Figure 1B, for example, illustrates a web browser displaying a web page with a **product listing** that includes a **product description** (“information associated with the item”), a **product price** (“a marketplace rule”), and a **purchasing button** (“clickable buy button”). EX1002, ¶180.



EX1004, FIG. 1B

Based on the above, Dierks's **HTML generator 312** is a “*widget builder resource configured to generate a product listing, wherein the product listing includes: (i) information associated with the item, (ii) a marketplace rule, and (iii) a clickable buy button.*” EX1002, ¶181.

(3) *Motivation to Combine Wiser and Dierks*

A POSITA would have been motivated, according to and informed by Dierks's teachings, to implement Wiser's online music distribution system to

include an HTML generator as taught by Dierks to generate Wiser’s product listing. EX1002, ¶182.

First, Wiser and Dierks are from the same field of endeavor. *See, e.g., Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 1574–75 (Fed. Cir. 1983); M.P.E.P. §2141. Both references are directed to electronic commerce. Wiser discloses a “computer implemented online music distribution system provides for the secure delivery of audio data and related media, including text and images, over a public communications network.” EX1003, Abstract. Dierks discloses a “computer-implemented method [for] generating on a user terminal a merchant web site associated with a merchant with code for a merchant web page.” EX1004, Abstract. Thus, both references are directed to electronic commerce. Accordingly, a POSITA would have understood that Dierks’s teachings were directly applicable to Wiser’s system. EX1002, ¶183.

Second, implementing Wiser’s system to include an HTML generator as taught by Dierks to generate Wiser’s product listing would have yielded expected, predictable results. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007); M.P.E.P. §2143(I)(A). Wiser discloses a preview listing on a web site that includes information associated with an item for sale, price of the item, and a “Place Order” or “Buy It” button. *See* EX1003, Figure 8, 16:30–36; *see also* Section VIII.B.1.e)(1). Dierks discloses an HTML generator that—based on information provided by a user

about an item for sale, including its price and description—generates code for a product listing, including a “purchasing button,” that the user can cut-and-paste (*i.e.*, embed) in the user’s web site. *See* EX1004, Figures 1B, 3, and 4, and ¶¶62–64, 71, 73, 74; *see also* Section VIII.B.1.e)(2). A POSITA would have combined the elements taught by Wiser and Dierks, using known and routine computer programming principles, to implement Wiser’s system to include an HTML generator as taught by Dierks to generate Wiser’s product listing. This result would have been readily predictable and recognized by a POSITA. EX1002, ¶184.

Third, a POSITA would have been motivated to combine the teachings of Wiser and Dierks because Dierks teaches the implementation details for generating a product listing that Wiser omits. Combining the two teachings would have entailed the simple substitution of one known element (a system that displays a product listing in Wiser) for another (a system with an HTML generator that generates code for a product listing as taught by Dierks) to obtain predictable results. *KSR*, 550 U.S., 416; M.P.E.P. §2143(I)(B). This substitution would have been readily achievable by a POSITA via known and routine computer programming principles to implement Wiser’s system and would have provided the predictable result of including an HTML generator to generate the code needed to display a product listing on a web site. EX1002, ¶185.

Fourth, a POSITA would have been motivated to combine the teachings of Wiser and Dierks because including an HTML generator in an online music distribution system to generate a product listing would have been obvious to try. *KSR*, 550 U.S., 421; M.P.E.P. §2143(I)(E). There were only two possible known and predictable choices for generating a product listing in an online music distribution system—(1) write unique code to display a listing for every piece or group of music for sale and (2) have a tool such as Dierks’s HTML generator that gathers unique information associated with a piece or group of music for sale but uses mostly the same code to generate a product listing. A POSITA would have pursued these two potential solutions with a reasonable expectation of success because the analysis would have simply involved trying each one of these two solutions. *See, e.g., CRFD Research, Inc. v. Matal*, 876 F.3d 1330, 1347 (Fed. Cir. 2017) (“[A] person of ordinary skill would have two predictable choices ... providing [the] person of ordinary skill with a simple design choice” of choosing one solution or the other). Thus, it would have been obvious to a POSITA to have selected the inclusion of an HTML generator as taught by Dierks in Wiser’s system. EX1002, ¶186.

Fifth, including Dierks’s HTML generator in Wiser’s system would have been readily implemented by simply augmenting Wiser’s system to include an HTML generator that gathers information about music for sale and generates code

to list the music for sale on a web site. A POSITA would have used basic computer programming principles to implement Wisser's system to include Dierks's HTML generator. This implementation would have been well within the knowledge and skillset of a POSITA. EX1002, ¶187.

(4) *Reasonable Expectation of Success in Combining Wisser and Dierks*

A POSITA would also have had a reasonable expectation of success. The combination of Wisser and Dierks represents a straightforward implementation of an HTML generator in Wisser's system to gather information displayed in Wisser's product listing and generate code for the product listing, which a POSITA would have been familiar with and been able to implement. The reasons a POSITA would have expected success parallel those that provide motivation for this combination—including because both Wisser and Dierks are directed to electronic commerce and both disclose similar product listings. *See, e.g.*, EX1003, Abstract, Figure 8; EX1004, Abstract, Figure 1B; *see also* Section VIII.B.1.e)(3). EX1002, ¶188.

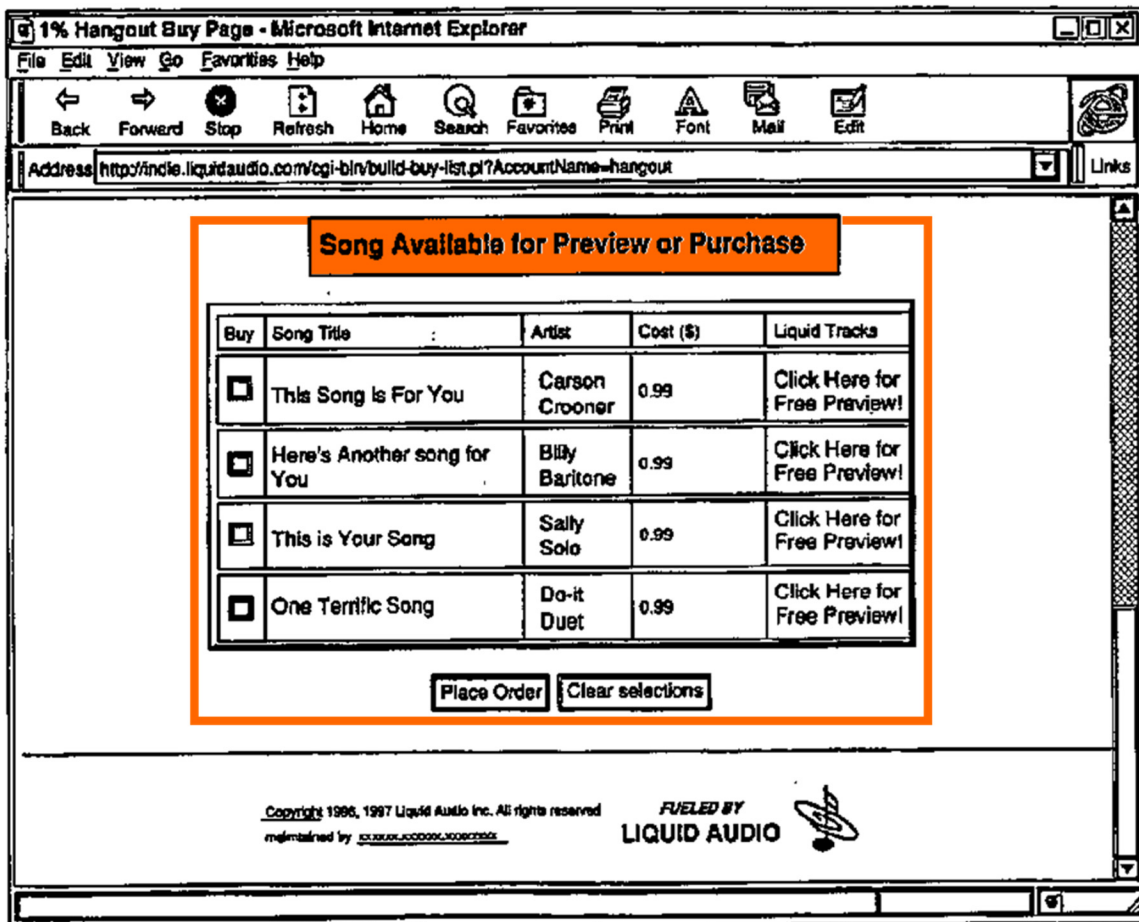
Accordingly, Wisser alone or in view of Dierks renders obvious element 1[d] and a POSITA would have been motivated to combine the teachings of these references and would have had a reasonable expectation of success. *Id.*, ¶189. For these same reasons, a POSITA would have been motivated to combine the teachings

of these references for all subsequently discussed claims and limitations in this Ground. *Id.*

f) 1[e]

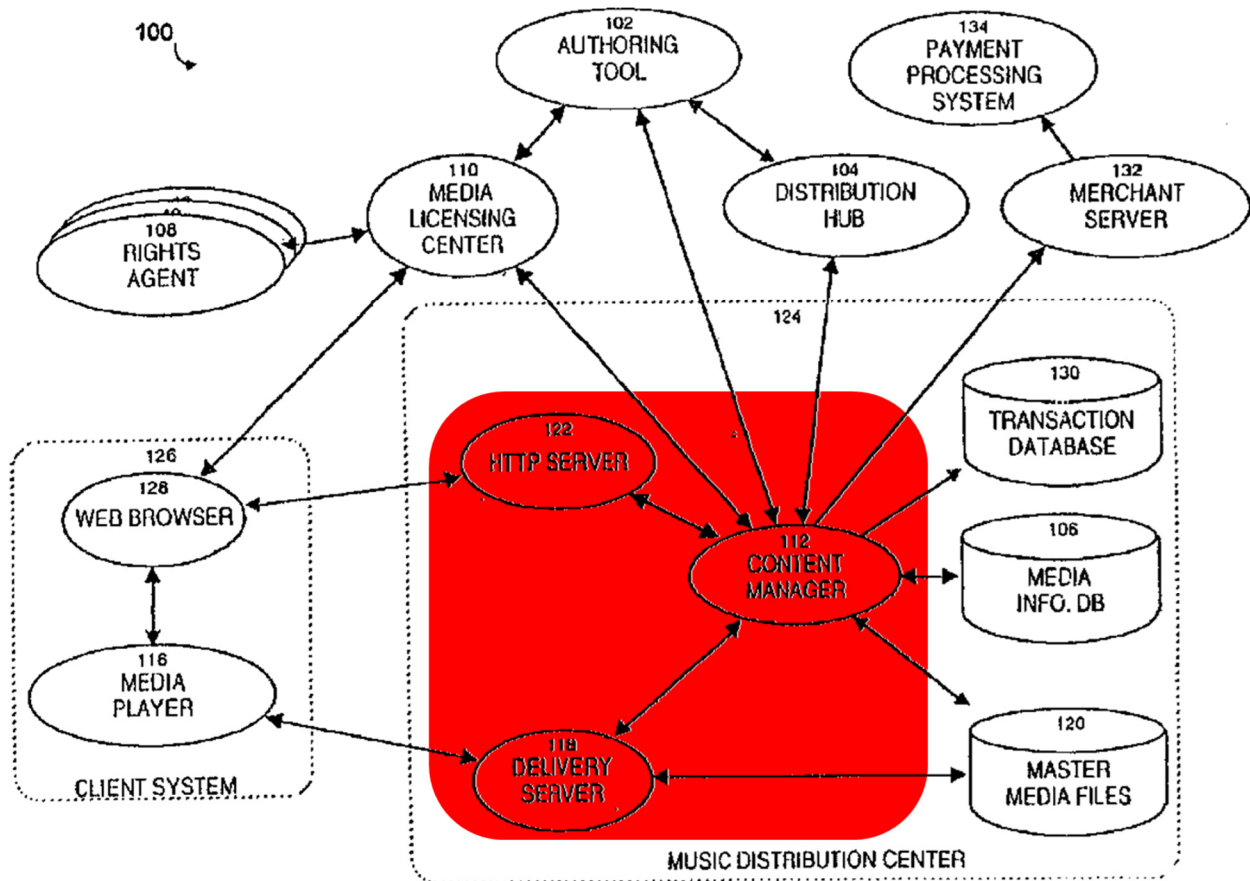
Wiser renders obvious element 1[e]. EX1002, ¶190.

First, as discussed above, in Figure 8, Wiser discloses a **preview listing** (“*product listing*”), which is displayed on a web site in a web browser—for example, web browser 128 of client system 126 (“*the product listing is configured to be displayed on the web site*”). See EX1003, 16:30–33. EX1002, ¶191.



EX1003, FIG. 8

Second, given the communication between the **HTTP server 122** (“the server”) of the music **distribution center 124** and the web browser 128 (see Wiser’s Figure 1 below), a POSITA would have understood that at least the **HTTP server 122** would be configured to distribute the product listing to the web site. EX1002, ¶192.



EX1003, FIG. 1

Third, it was well-known before the '678 patent's priority date that a product listing could be distributed to a group of users based on how the **cost** (“the marketplace rule”) of a product—a song in Wiser—relates to the demographics of

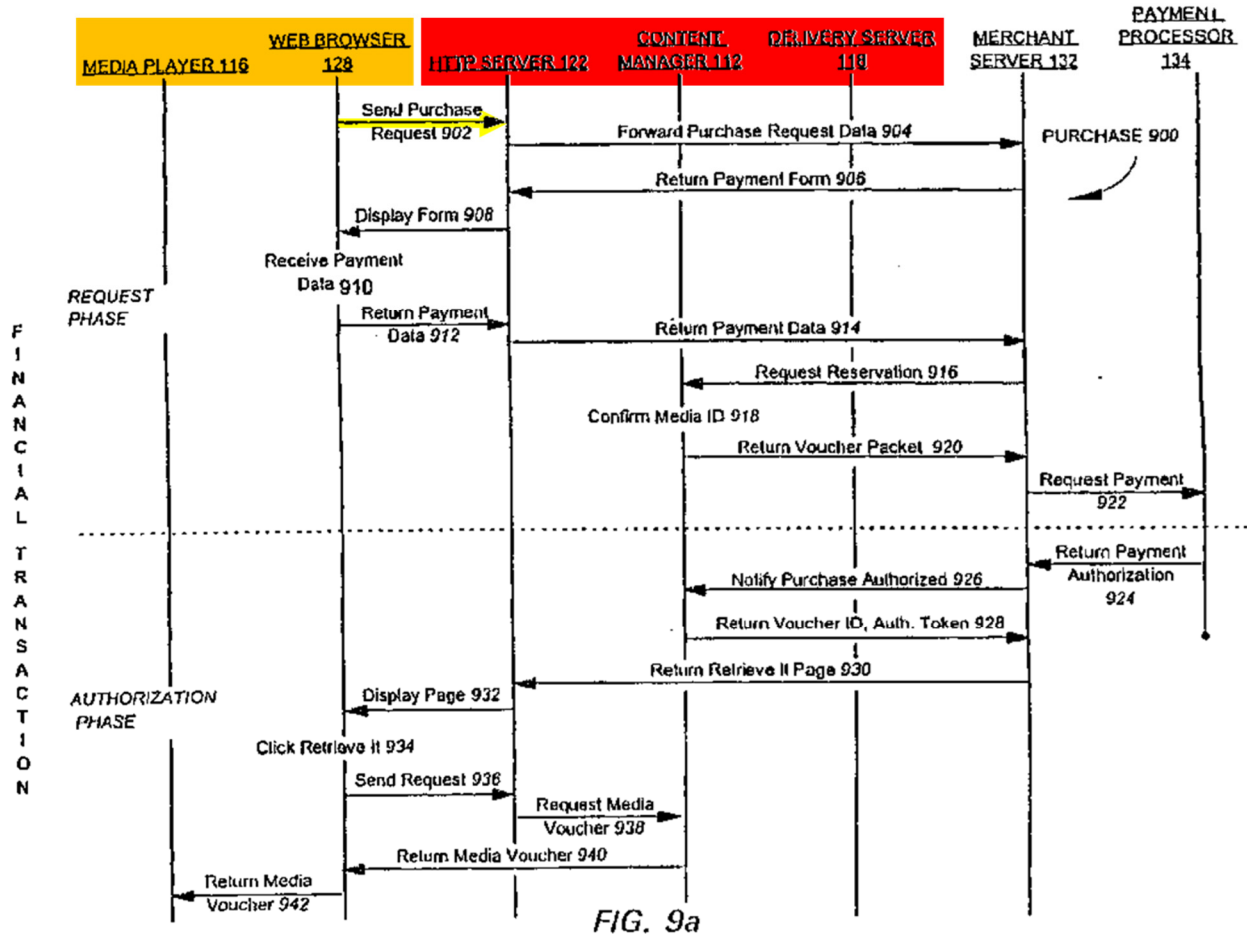
the users of client systems 126. For example, analyses of prior sales may show that a particular product or service would sell to a group of buyers only if priced in a predetermined range. *See, e.g.*, EX1016, ¶13 (disclosing that companies can utilize consumer’s demographic information and past order history “to send promotions to specific consumers”). Accordingly, a POSITA would have found it obvious that Wiser’s music distribution center 124 would distribute a song to a group of users only if the **cost** for the song is within a predetermined range (“*based on the marketplace rule*”). EX1002, ¶193.

Therefore, Wiser renders obvious element 1[e]. *Id.*, ¶194.

g) 1[f]

Wiser discloses element 1[f]. For example, Wiser discloses that, “[f]rom the user’s Web browser 128 a purchase request for a specific song is sent 902 to the **HTTP server 122**, for example by the user clicking on a ‘Buy It’ button”. EX1003, 16:33–36. Web browser 128 belongs to **client system 126** (“*a remote computing device*”). *See id.*, 5:61–62 (“Client systems 126 include a media player 116 and a Web browser 128.”), 6:1-5, Figure 1 (illustrating client system 126 including web browser 128 and media player 116). Wiser’s Figure 9a shows that **HTTP server 122** (“*the server*”) receives the purchase request (resulting from the user clicking on a “Buy It” button) from **web browser 128 of client system 126** at

step 902 (arrow highlighted in yellow) (“an indication that the clickable buy button has been selected by a remote computing device”). EX1002, ¶195.



EX1003, FIG. 9a

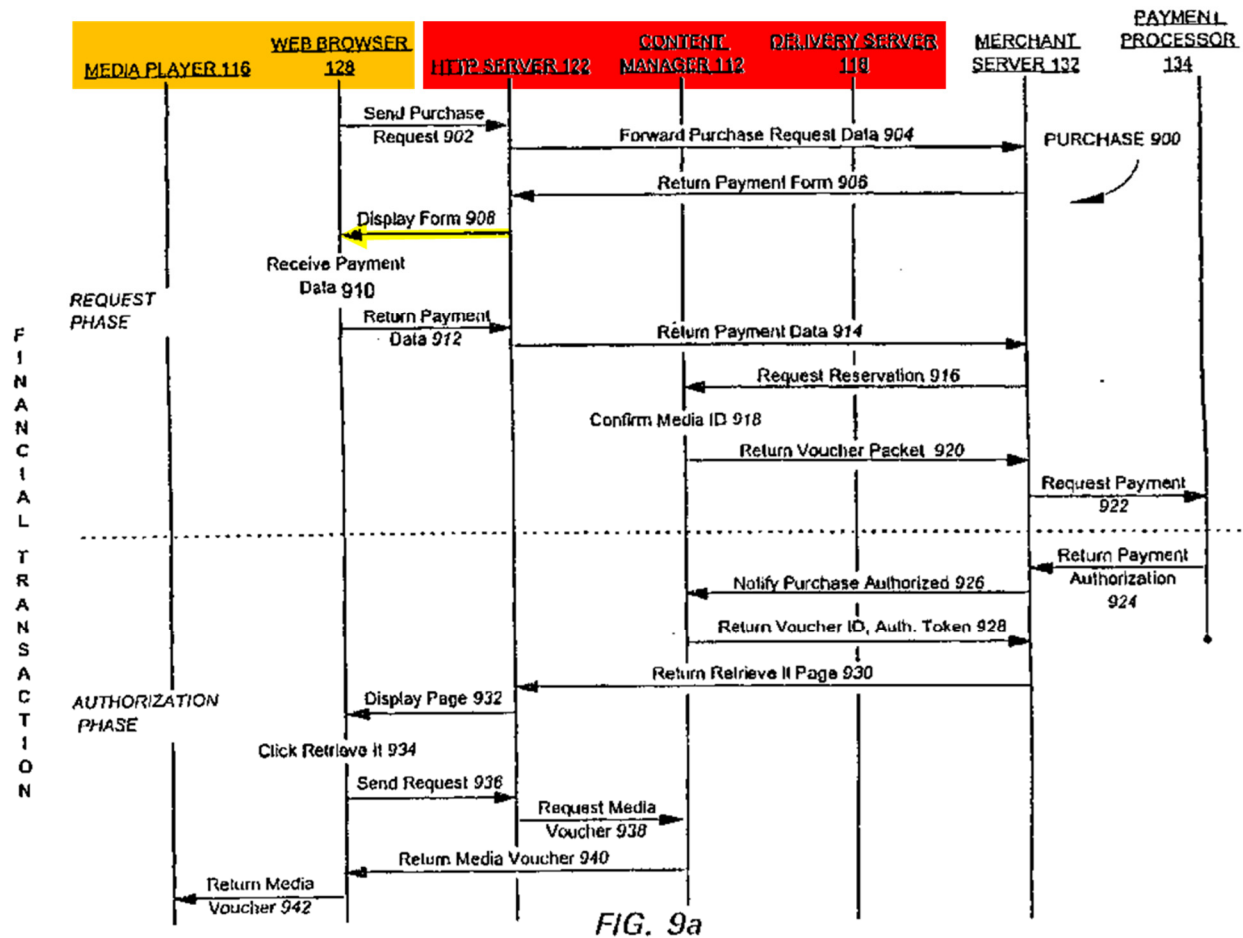
Therefore, Wiser discloses element 1[f]. EX1002, ¶196.

h) 1[g]

Wiser discloses or, in combination with Dierks, renders obvious element 1[g].

EX1002, ¶197.

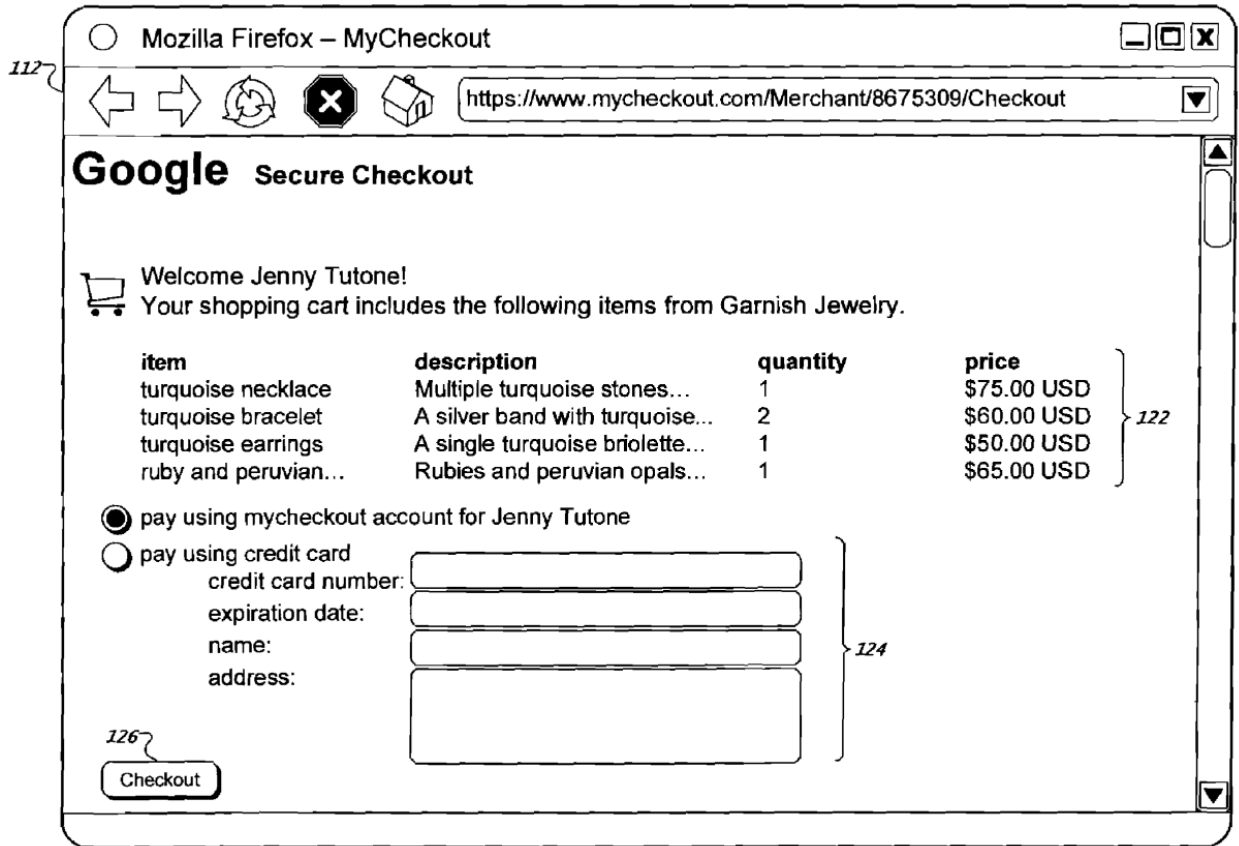
For example, referring to Figure 9a, Wiser discloses that, after **HTTP server 122** (“*the server*”) forwards the purchase request to the merchant server 132 at step 904, it receives a payment request form from the merchant server 132 at step 906. EX1003, 16:43–50. Subsequently, **HTTP server 122** provides the payment request form for display at **web browser 128 of client system 126** (“*the remote computing device*”) at step 908 (arrow highlighted in yellow). *Id.*, 16:50–51. Wiser further explains that “[t]he user completes 910 the form, which preferably requests the user’s name, credit card number, and expiration date.” *Id.*, 16:52–54. Thus, Wiser’s payment request form corresponds to “*a checkout screen.*” EX1002, ¶198.



EX1003, FIG. 9a

Dierks illustrates an exemplary checkout screen in a web browser in Figure 1E. As can be seen, Dierks's checkout screen includes fields for a user to enter the user's name, credit card number, and expiration date, just like in Wiser's payment request form. A POSITA would have found it obvious to implement Wiser's disclosed payment request form to be displayed in a similar fashion to Dierks's checkout screen. The POSITA would have been motivated to combine the teachings of Wiser and Dierks for the reasons discussed in Section VIII.B.1.e)(3) and would

have had a reasonable expectation of success in combining the teachings of Wiser and Dierks as explained in Section VIII.B.1.e)(4). EX1002, ¶199.



EX1004, FIG. 1E

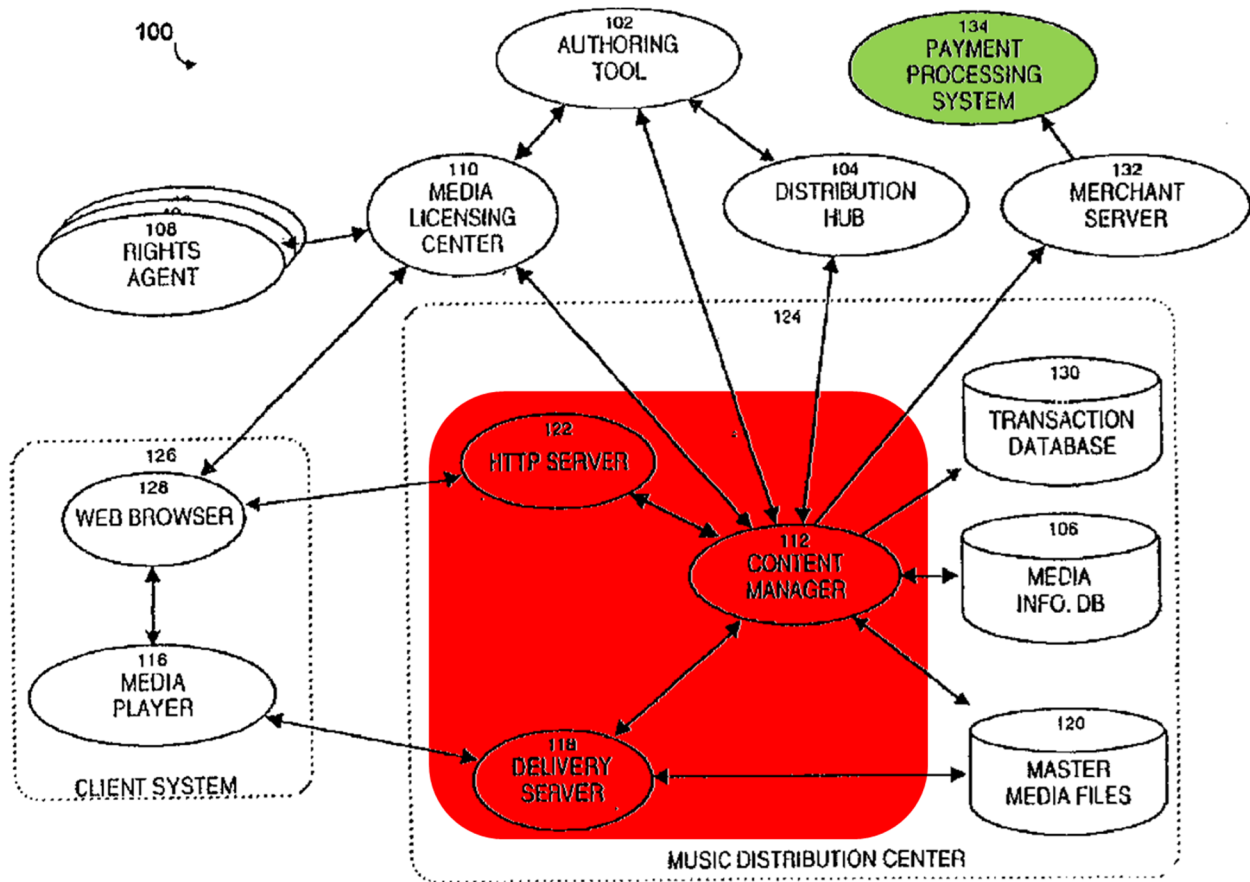
Therefore, Wiser discloses or, in combination with Dierks, renders obvious element 1[g]. EX1002, ¶200.

i) 1[h]

Wiser discloses element 1[h]. EX1002, ¶201.

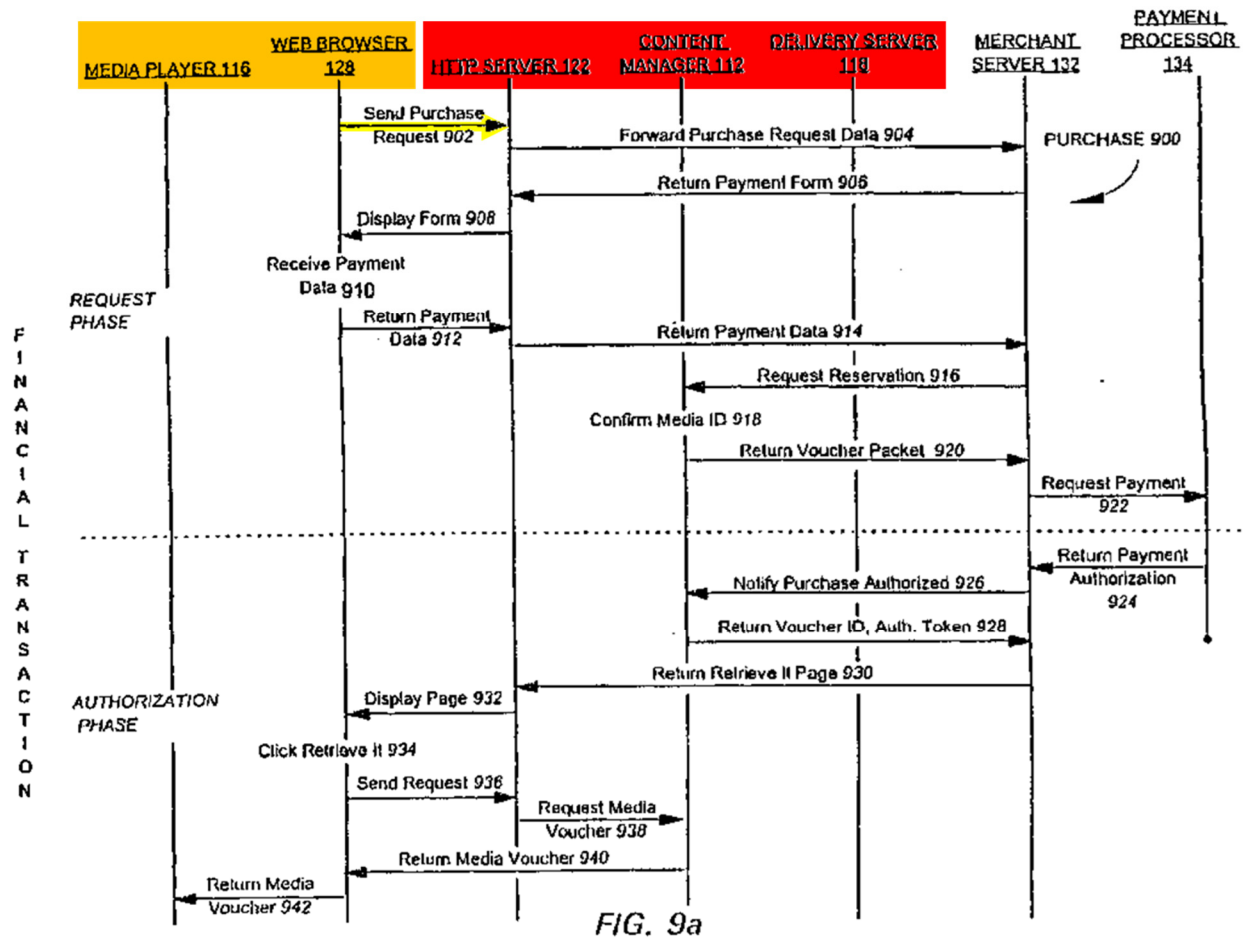
First, Wiser discloses that data entered by the user in the payment request form are “transmitted back 912 to the **HTTP server 122** which passes 914 it to the

merchant server 132.” EX1003, 16:52–61. Thereafter, “the merchant server 132 connects to a payment processor gateway 134 to request payment 922 by verifying the availability of funds and receiving 924 payment authorization.” *Id.*, 18:3–6; *see also id.*, 11:12–15 (“The payment processing systems 134 are conventional payment authorization systems, such as credit card authorization systems or debit card payment authorization systems.”). In other words, **payment processing system 134** (“the transaction processing service”) “is configured to process a payment.” EX1002, ¶202.



EX1003, FIG. 1

Second, in Wiser's Figure 9a, **HTTP server 122** provides the payment request form for display at **web browser 128 of client system 126** at step 908 after web browser 128 sends a purchase request at step 902. EX1003, 16:33–35, 16:43–51. Web browser 128 sends the purchase request “for a specific song” (“*a product*”) in response to “the user clicking on a ‘Buy It’ button” in the product listing displayed in the web browser 128. *Id.*, 16:33–36; *cf.* EX1001, 11:25–27 (“each uploaded content file represents an item for promotion and distribution”; “[e]ach ‘item’ is made available as a ‘product’ for marketing purposes”); 6:37–38 (“the items include individual songs, song releases, or entire song catalogues”). Thus, the payment processed by **payment processing system 134** is for “*a purchase of a product associated with the product listing.*” EX1002, ¶203.



EX1003, FIG. 9a

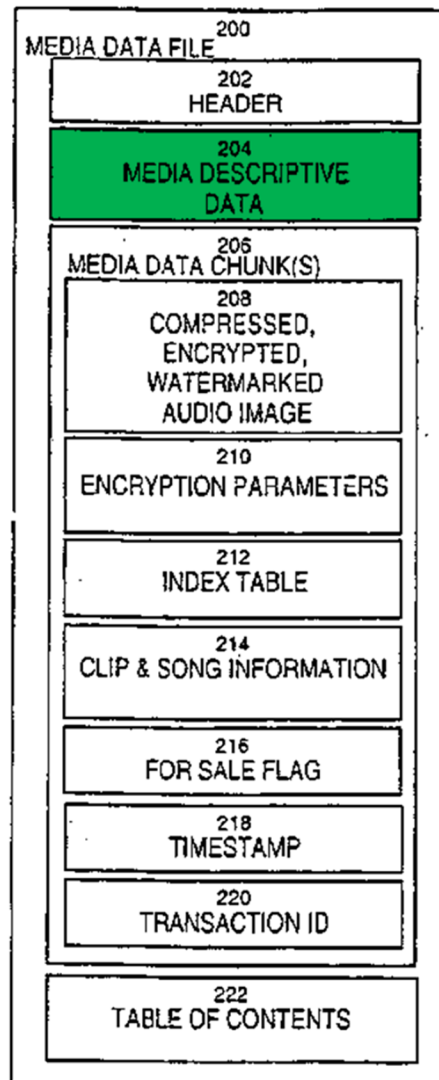
Third, “the purchase [is] initiated from the checkout screen using the remote computing device” when the user submits the data requested (e.g., user’s name, credit card number, and expiration date) in the payment request form displayed on **web browser 128 of client system 126** (“the remote computing device”), as discussed for element 1[g]. EX1002, ¶204.

Therefore, Wiser discloses element 1[h]. *Id.*, ¶205.

For the above reasons, Wiser in view of Dierks renders obvious claim 1. *Id.*, ¶206.

2. Claim 2

Wiser discloses the additional limitation of claim 2. For example, Wiser discloses that **media descriptive data 204** (“*the metadata*”) “include **descriptive text**, such as **title**.” EX1003, 6:61–64; *see also* Section VIII.B.1.c). EX1002, ¶207.



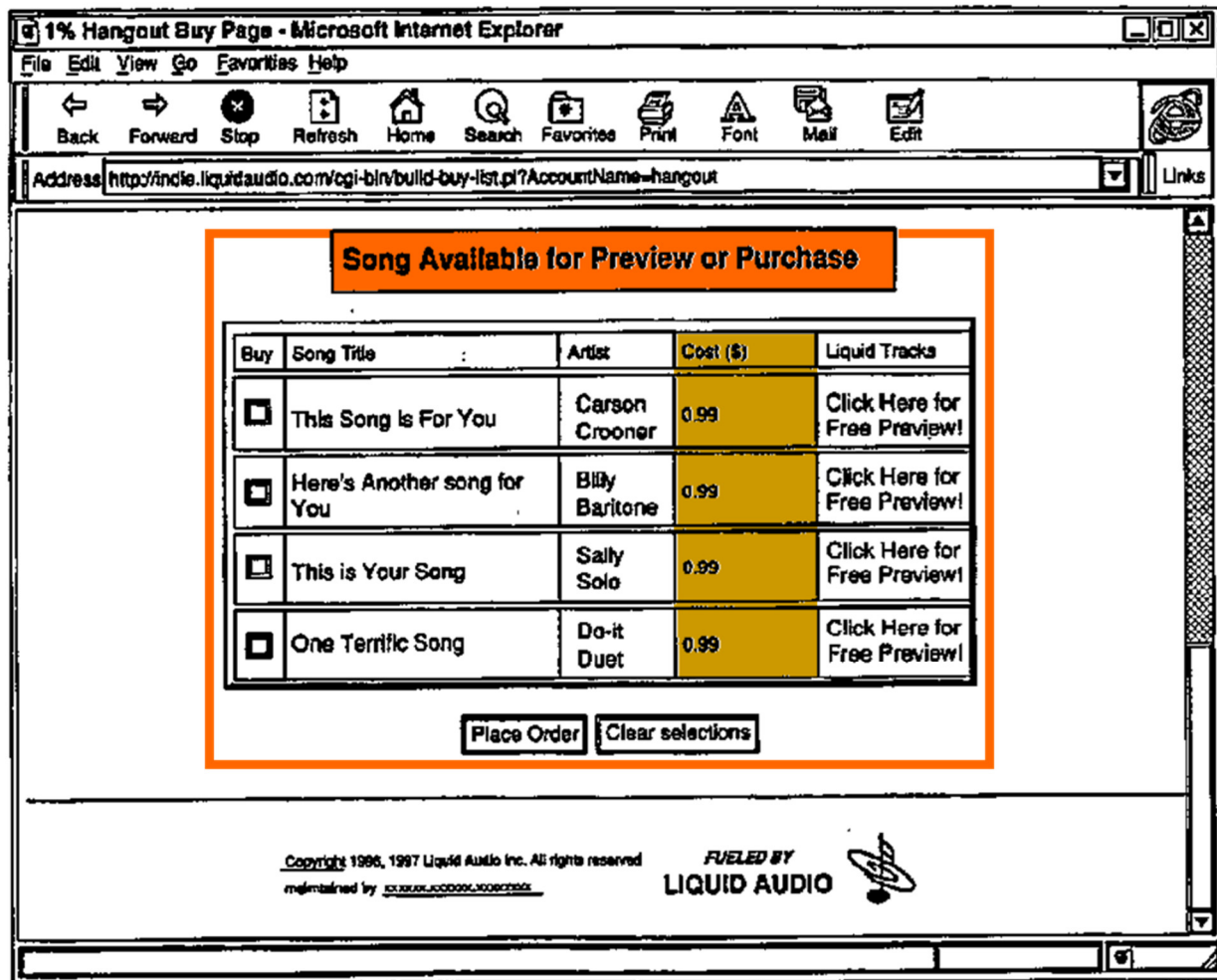
EX1003, FIG. 2

3. Claim 3

Wiser in view of Dierks renders obvious the additional limitation of claim 3. It was well-known prior to the '678 patent's priority date for users to access a merchant's web site from a smartphone. *See, e.g.*, EX1006, ¶48 (“User device 140 may be a computer, cell phone, **smart-phone**, laptop, or any other network communication device with hardware and software that enables the customer to use the device 140 **to access and navigate a merchant's website** 122.”). For example, Dierks discloses that “a client 304... may represent a consumer browsing the web to purchase items,” a “mobile computer device 950” may be used with its disclosed techniques, and the mobile computer device 950 can be in the form of a smartphone. EX1004, ¶¶61, 99. Accordingly, a POSITA would have found it obvious that Wiser's client system 126—which allows a user to browse a web site on web browser 128 to purchase a song—could be a smartphone. EX1002, ¶209.

4. Claim 4

Wiser discloses the additional limitation of claim 4. For example, as discussed for element 1[d], Wiser's **preview listing** includes the “**Cost**” (“*the marketplace rule*”) of the song. *See* EX1003, Figure 8. “Cost” and “price” are generally used interchangeably. *Compare id.*, Figure 8 (showing “Cost (\$)” and “0.99”) with EX1001, Figure 12 (showing “\$0.99”); *see also* Section VIII.B.1.e)(1). EX1002, ¶211.

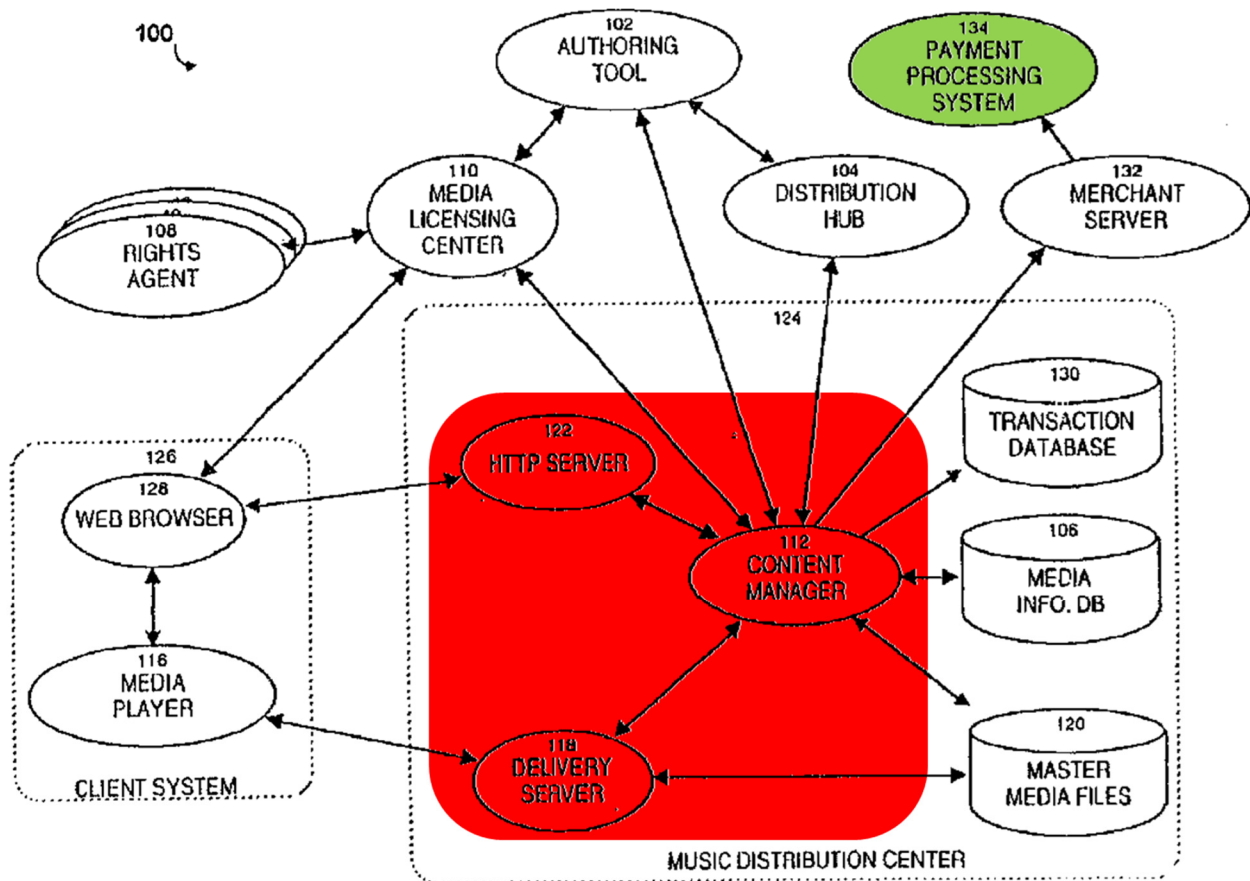


EX1003, FIG. 8

5. Claim 7

Wiser discloses the additional limitation of claim 7. For example, Wiser discloses that “**payment processing systems 134** are **conventional** payment authorization systems, such as credit card authorization systems or debit card payment authorization systems.” EX1003, 11:12–15. It was well-known before the ’678 patent’s priority date that conventional credit or debit card authorization systems are third-party banking institutions that issue credit or debit cards. *See, e.g.,*

EX1005, ¶300 (“credit card vendors”); EX1006, ¶22 (“a third-party credit provider”). Thus, a POSITA would have found it obvious that the service provided by Wisser’s **payment processing system 134** is “a managed service.” Moreover, as explained above for element 1[a], **payment processing system 134** is in communication with **content manager 112** (“the server”) via merchant server 132. EX1002, ¶213.



EX1003, FIG. 1

6. Claim 8

Wiser renders obvious the additional limitation of claim 8. Wiser discloses that music distribution center 124 communicates with client systems 126 “over a public communication network, preferably the Internet.” EX1003, 6:17–21. It was well-known before the ’678 patent’s priority date that a server that communicates with client devices over the Internet could be a cloud-based server. *See, e.g.*, EX1014, ¶179 (“client 1510 and cloud-based server 1550, which are separated by WAN 1540”), Figure 15; EX1015, ¶3 (“Cloud computing is a style of computing in which computing resources such as application programs and file storage are remotely provided over the Internet, typically through a web browser.”), ¶11 (“FIG. 1 is a schematic diagram illustrating information exchange between a cloud-enabled computer [100] and a cloud-based server [130] offering a cloud-based service.”), Figure 1. Thus, a POSITA would have found it obvious that Wiser’s **content manager 112, delivery server 118, and HTTP server 122** could comprise “*one or more cloud-based servers.*” EX1002, ¶215.

7. Claim 9

a) 9[preamble]⁸

⁸ See n. 5.

Regardless of whether the preamble is limiting, Wiser discloses it for at least the same reasons discussed for element 1[preamble]. EX1002, ¶217.

b) 9[a]

Wiser discloses element 9[a] for at least the same reasons discussed for element 1[a]. EX1002, ¶218.

c) 9[b]

Wiser discloses element 9[b] for at least the same reasons discussed for element 1[b]. EX1002, ¶219.

d) 9[c]

Wiser discloses element 9[c] for at least the same reasons discussed for element 1[c]. EX1002, ¶220.

e) 9[d]

Wiser alone, or in combination with Dierks, renders obvious element 9[d] for at least the same reasons discussed for element 1[d]. EX1002, ¶221.

f) 9[e]

Wiser renders obvious element 9[e] for at least the same reasons discussed for element 1[e]. Element 9[e] further requires that the web site be “*operated by the server*” **or** the distributed application “*not operated by the server.*” Wiser discloses that the web site is “*operated by the server.*” In Wiser, the web site displayed in the web browser—for example, web browser 128—is operated by at least the **HTTP server 122** (“*the server*”). Wiser makes clear that “Web browser 128 of the client

system 126 interfaces with the music distribution center 124 via the World Wide Web portion of the Internet using conventional HTTP and HTTP over SSL, and the music distribution center's **HTTP server 122**." EX1003, 6:25–29. Further, Wiser explains that the "Web page in the Web browser 128... has a link to a preview of a desired media data file 200." *Id.*, 14:39–41; *see also id.*, Figure 8. "The link is to the **HTTP server 122**, and when clicked, the Web browser 128 invokes 702 the **HTTP server 122** with a request for a preview of a media data file 200." *Id.*, 14:42–45; *see also id.*, Figure 7. Therefore, in Wiser, the web site is "*operated by the server*." EX1002, ¶222.

Therefore, Wiser discloses element 9[e]. *Id.*, ¶223.

g) 9[f]

Wiser discloses element 9[f] for at least the same reasons discussed for element 1[f]. EX1002, ¶224.

h) 9[g]

Wiser discloses or, in combination with Dierks, renders obvious element 9[g] for at least the same reasons discussed for element 1[g]. EX1002, ¶225.

i) 9[h]

Wiser discloses element 9[h] for at least the same reasons discussed for element 1[h]. EX1002, ¶226.

Therefore, Wiser in view of Dierks renders claim 9 obvious. EX1002, ¶227.

8. Claim 10

Wiser discloses the additional limitation of claim 10 for at least the same reasons discussed for claim 2. EX1002, ¶228.

9. Claim 11

Wiser in view of Dierks also renders obvious the additional limitation of claim 11 for at least the same reasons discussed for claim 3. EX1002, ¶230.

10. Claim 12

Wiser discloses the additional limitation of claim 12 for at least the same reasons discussed for claim 4. EX1002, ¶232.

11. Claim 15

***a) 15[preamble]*⁹**

Regardless of whether the preamble is limiting, Wiser discloses it for at least the same reasons discussed for element 1[preamble]. EX1002, ¶234.

b) 15[a]

Wiser discloses element 15[a] for at least the same reasons discussed for element 1[a]. EX1002, ¶235.

c) 15[b]

Wiser discloses element 15[b] for at least the same reasons discussed for element 1[b]. EX1002, ¶236.

⁹ See n. 5.

d) 15[c]

Wiser discloses element 15[c] for at least the same reasons discussed for element 1[c]. EX1002, ¶237.

e) 15[d]

Wiser alone, or in combination with Dierks, renders obvious element 15[d] for at least the same reasons discussed for element 1[d]. EX1002, ¶238.

f) 15[e]

Wiser renders obvious element 15[e] for at least the same reasons discussed for element 1[e]. EX1002, ¶239.

g) 15[f]

Wiser discloses element 15[f] for at least the same reasons discussed for element 1[f]. EX1002, ¶240.

h) 15[g]

Wiser discloses or, in combination with Dierks, renders obvious element 15[g] for at least the same reasons discussed for elements 1[g] and 1[h]. EX1002, ¶241.

i) 15[h]

Wiser discloses element 15[h] for at least the same reasons discussed for element 1[h]. EX1002, ¶243.

Therefore, Wiser in view of Dierks renders obvious claim 15. EX1002, ¶244.

12. Claim 16

Wiser discloses the additional limitation of claim 16 for at least the same reasons discussed for claim 2. EX1002, ¶245.

13. Claim 17

Wiser discloses the additional limitation of claim 17 for at least the same reasons discussed for claim 3. EX1002, ¶247.

14. Claim 18

Wiser discloses the additional limitation of claim 18 for at least the same reasons discussed for claim 4. EX1002, ¶249.

C. Ground 3: Claims 5, 6, 13, 14, 19, and 20 are Obvious over Wiser, Dierks, and Chang

1. Claim 5

Wiser in view of Dierks and Chang renders obvious the additional limitation of claim 5. EX1002, ¶251.

As discussed for elements 1[d] and 1[e], Wiser alone, or in combination with Dierks, renders obvious generating a product listing that can be distributed to a web site. Wiser and Dierks do not explicitly disclose that the product listing “*includes a share link.*” However, a POSITA would have been motivated by Chang’s teachings to further implement Wiser’s system as configured by Dierks’s teachings (the “Wiser-Dierks system”) such that the product listing “*includes a share link.*” EX1002, ¶252.

Chang discloses “generating an item page that includes widget code and details related to an item for sale.” EX1008, Abstract. Chang further discloses including a share button in the widget code. *Id.*, ¶43. Chang explains that “[t]his share button, when executed using an input device, may generate a prompt asking the user 201 where they would like to embed the widget code (e.g., what web page associated with what web site and servers associated with the web site).” *Id.* Including a share button as taught by Chang in the Wiser-Dierks system’s product listing would, for example, allow sellers to readily share their product listings, thereby expanding their market. *Id.* EX1002, ¶253.

(1) Motivation to Combine Wiser, Dierks, and Chang

A POSITA would have motivated, according to and informed by Chang’s teachings, to implement the Wiser-Dierks system to include a share button in the Wiser-Dierks system’s product listing. EX1002, ¶254.

First, Wiser, Dierks, and Chang are from the same field of endeavor. *See, e.g., Medtronic*, 721 F.2d at 1574–75; M.P.E.P. §2141. These references are directed to electronic commerce. Wiser discloses a “computer implemented online music distribution system provides for the secure delivery of audio data and related media, including text and images, over a public communications network.” EX1003, Abstract. Dierks discloses a “computer-implemented method [for] generating on a user terminal a merchant web site associated with a merchant with

code for a merchant web page.” EX1004, Abstract. Chang discloses “the use of widgets to implement a distributed commerce and viral marketing regime.” EX1008, ¶2. Thus, all three references are directed to electronic commerce. Accordingly, a POSITA would have understood that Chang’s teachings were directly applicable to the Wiser-Dierks system. EX1002, ¶255.

Second, implementing the Wiser-Dierks system to include a share button in the product listing as taught by Chang would have yielded expected, predictable results. *KSR*, 550 U.S. at 416; M.P.E.P. §2143(I)(A). The Wiser-Dierks system generates a product listing. *See* Section VIII.B.1.e). Chang discloses including a share button in the widget code for an item page for an item for sale. EX1008, Abstract, ¶43. A POSITA would have combined the elements of the Wiser-Dierks system and the elements taught by Chang—namely, the Wiser-Dierks system’s product listing and the share button as taught by Chang—using known and routine computer programming principles to implement the Wiser-Dierks system to include a share button in its product listing to allow a user to share the product listing. This result would have been readily predictable and recognized by a POSITA. EX1002, ¶256.

Third, a POSITA would have been motivated to combine the teachings of Chang with the Wiser-Dierks system because it would have entailed the simple substitution of one known element (the Wiser-Dierks system’s product listing

without a share button) for another (a product listing with a share button as taught by Chang) to obtain predictable results. *KSR*, 550 U.S., 416; M.P.E.P. §2143(I)(B). This substitution would have been readily achievable by a POSITA via known and routine computer programming principles to implement the Wiser-Dierks system, and would have provided the predictable result of including a share button in a product listing. EX1002, ¶257.

Fourth, including Chang's share button in the Wiser-Dierks system would have been readily implemented by simply augmenting the code that displays the Wiser-Dierks system's product listing to include a share button as taught by Chang. A POSITA would have used basic computer programming principles to implement the code that displays the Wiser-Dierks system's product listing to include Chang's share button to allow a user to share the product listing. This implementation would have been well within the knowledge and skillset of a POSITA. EX1002, ¶258.

(2) Reasonable Expectation of Success in Combining Wiser, Dierks, and Chang

A POSITA would also have had a reasonable expectation of success. The combination of the Wiser-Dierks system and Chang represents a straightforward implementation of including a share button in the product listing to allow a user to share the product listing, which a POSITA would have been familiar with and been able to implement. The reasons a POSITA would have expected success parallel

those that provide motivation for this combination—including because Wiser, Dierks, and Chang are directed to electronic commerce and all relate to product listings. *See, e.g.*, EX1003, Abstract, Figure 8; EX1004, Abstract, Figure 1B; EX1008, Abstract, ¶2; *see also* Section VIII.C.1(1). EX1002, ¶259.

Accordingly, Wiser in view of Dierks and Chang renders obvious claim 5 and a POSITA would have been motivated to combine the teachings of these references and would have had a reasonable expectation of success. *Id.*, ¶260. For these same reasons, a POSITA would have been motivated to combine the teachings of these references for all subsequently discussed claims and limitations in this ground. *Id.*

2. Claim 6

The combination of Wiser, Dierks, and Chang also renders obvious the additional limitation of claim 6. EX1002, ¶261.

First, Chang teaches that a user is prompted to specify where to embed the widget code by executing the share button by an input device. EX1008, ¶43. A POSITA would have understood that, in the combined Wiser-Dierks-Chang system, the share button would be activated by a user device such as Wiser’s client system 126 (“*the share link has been selected activated by the remote computing device*”). EX1002, ¶262.

Second, Chang discloses a commerce server 110 distributing widget code to “a plurality of social networking servers reflecting a plurality of **social networking**

sites” such as “FACEBOOK™, MYSPACE™, LINKED-IN™.” EX1008, ¶41, Figure 2. Therefore, a POSITA would have found it obvious that, in the combined Wiser-Dierks-Chang system, a server like Wiser’s HTTP server 122 would distribute the product listing to a social networking site (“*the server distributes the product listing to a social media network*”) when the server receives an indication that a user has activated the share button. EX1002, ¶263.

3. Claim 13

Wiser in view of Dierks and Chang discloses the additional limitation of claim 13 for at least the same reasons discussed for claim 5. EX1002, ¶265.

4. Claim 14

Wiser in view of Dierks and Chang discloses the additional limitation of claim 14 for at least the same reasons discussed for claim 6. EX1002, ¶267.

5. Claim 19

Wiser in view of Dierks and Chang discloses the additional limitation of claim 19 for at least the same reasons discussed for claim 5. EX1002, ¶269.

6. Claim 20

Wiser in view of Dierks and Chang discloses the additional limitation of claim 20 for at least the same reasons discussed for claim 6. EX1002, ¶271.

IX. DISCRETIONARY DENIAL IS NOT WARRANTED UNDER § 325(d)

A. Overlooking the Prior Art was Material Error

Wiser was not before the Examiner during prosecution. Johnston, Chang, and USP No. 9,721,290, which is related¹⁰ to Dierks, were of record in the '678 patent's prosecution, but the Examiner did not mention, describe, address, or apply Johnston, Chang, and the '290 patent—alone or in combination—substantively.

“[I]f the record of the Office’s previous consideration of the art is not well-developed or *silent*, then a petitioner may show the Office erred by overlooking something persuasive...” *Advanced Bionics, LLC v. MED-EL Elektromedizinische Gerate GmbH*, IPR2019-01469, Paper 6 at 10 (P.T.A.B. Feb. 13, 2020) (emphasis added); *see also Amazon.com, Inc., v. M2M Solutions LLC*, IPR2019-01205, Paper 14 at 16 (P.T.A.B. Jan. 27, 2020) (“The Board frequently holds that a reference that ‘was neither applied against the claims nor discussed by the Examiner’ does not weigh in favor of exercising the Board’s discretion under § 325(d) to deny a petition.”).

As discussed in the grounds above, Johnston or the combination of Wiser and Dierks discloses or renders obvious the precise limitations that the Examiner

¹⁰ The '290 patent is the last in a chain of continuation and divisional applications stemming from Dierks.

identified as not being taught by the closest prior art references (*see* EX1009, 254), demonstrating that the challenged claims are unpatentable. By overlooking the specific teachings of Johnston, Chang, and the Dierks-related '290 patent in allowing the challenged claims, the Examiner committed a material error even if PO may argue that the Examiner considered Johnston, Chang, and Dierks. *See* 35 U.S.C. §325(d); *Advanced Bionics*, Paper 6 at 10.

The Board has previously instituted review under these exact circumstances, and Shopify respectfully requests that it do so again here. *See, e.g., Mylan Pharms. Inc., v. Merck Sharp & Dohme Corp.*, No. IPR2020-00040, Paper 21 at 17–18 (P.T.A.B. May 12, 2020) (instituting review even though “WO '498 was presented to the Examiner” because the “Examiner never discussed WO '498 or made a rejection based on it” and “gave no reasons for allowance” even though the “disclosure meets the claimed invention” and “[t]he likeliest explanation ... is that the Examiner simply overlooked [its] teachings”); *Roku, Inc. v. Universal Elecs., Inc.*, No. IPR2019-01615, Paper 12 at 12–13 (P.T.A.B. Apr. 17, 2020) (“Examiner erred by overlooking the specific teachings of Chardon” because it taught the precise limitations that the Examiner had concluded were “not disclosed, taught, or suggested in the references applied” in allowing the claims); *see also Advanced Bionics*, Paper 6 at n. 9 (“An example of a material error may include

misapprehending or overlooking specific teachings of the relevant prior art where those teachings impact patentability of the challenged claims.”).

B. This Petition is not Cumulative of Unified Patents’ *Ex Parte* Reexamination

Discretionary denial in view of Unified’s EPR is not warranted. Unified has not been accused of infringement, but Shopify has. Defendants accused of infringement should be entitled to challenge the patent(s) asserted against them. Unified filed its request for EPR on April 9, 2024, based on the ground below. EX1028, 10–49.

Ground	Basis	Claims	Reference(s)
1	§103	1–6 and 8–20	Kuruvila, Chang, and Headings

On September 18, 2024, the Examiner issued a non-final Office Action, rejecting claims 1–6 and 8–20 under Unified’s proposed ground. EX1029, 3–12. PO petitioned for an extension of time to respond to the Office Action. The petition was dismissed, and PO failed to file a response by the November 18, 2024 due date. EX1033.

The ground in Unified’s EPR request and the Examiner’s Office Action presents a materially different ground from those presented in this Petition because it does not rely on Johnston, Wiser, or Dierks. Moreover, the grounds here challenge claim 7, which is unchallenged in the EPR.

X. CONCLUSION

Shopify requests institution of an *inter partes* review of the '678 patent and cancellation of claims 1–20.

Respectfully Submitted,

Dated: November 22, 2024

/Trishan Egram/
Trishan Egram, Lead Counsel
Registration No. 74,075

XI. APPENDIX OF CLAIM LISTING¹¹

Independent Claim 1

1[preamble]: A system for distributing multimedia content over a network, comprising:

1[a]: a server configured to control a transaction processing service; and

1[b]: a storage resource communicatively coupled to the server and configured to store an item, wherein the item comprises an identifier, multimedia content, and metadata,

1[c]: wherein the server is configured to: receive the item from the storage resource;

1[d]: execute a widget builder resource configured to generate a product listing, wherein the product listing includes: (i) information associated with the item, (ii) a marketplace rule, and (iii) a clickable buy button;

1[e]: distribute the product listing to a web site or a distributed application, wherein the product listing is configured to be displayed on the web site or the distributed application based on the marketplace rule;

¹¹ 37 C.F.R. §42.24(a)(1) (“The word count... does not include... appendix of exhibits or claim listing.”)

1[f]: receive an indication that the clickable buy button has been selected by a remote computing device; and

1[g]: provide a checkout screen to the remote computing device,

1[h]: wherein the transaction processing service is configured to process a payment for a purchase of a product associated with the product listing, the purchase initiated from the checkout screen using the remote computing device.

Dependent Claim 2

The system of claim 1, wherein the metadata includes a title or textual description.

Dependent Claim 3

The system of claim 1, wherein the remote computing device is a smartphone.

Dependent Claim 4

The system of claim 1, wherein the marketplace rule comprises one or more of: a price, sales campaign date, or geographic availability.

Dependent Claim 5

The system of claim 1, wherein the product listing includes a share link.

Dependent Claim 6

The system of claim 5, wherein when the server receives an indication that the share link has been selected activated by the remote computing device, the server distributes the product listing to a social media network.

Dependent Claim 7

The system of claim 1, wherein the transaction processing service comprises a managed service in communication with the server.

Dependent Claim 8

The system of claim 1, wherein the server comprises one or more cloud-based servers.

Independent Claim 9

9[preamble]: A system for generating distributing multimedia content over a network, comprising:

9[a]: a server configured to control a transaction processing service; and

9[b]: a storage resource communicatively coupled to the server, and configured to store an item, wherein the item comprises an identifier, multimedia content, and metadata,

9[c]: wherein the server is configured to: receive the item from the storage resource;

9[d]: execute a widget builder resource configured to generate a product listing, wherein the product listing includes: (i) information associated with the item, (ii) a marketplace rule, and (iii) a clickable buy button;

9[e]: distribute the product listing to a web site operated by the server or to a distributed application not operated by the server based on the marketplace rule;

9[f]: receive an indication that the clickable buy button has been selected by a remote computing device; and

9[g]: provide a checkout screen to the remote computing device,

9[h]: wherein the transaction processing service is configured to process a payment for a purchase of a product associated with the product listing, the purchase initiated from the checkout screen using the remote computing device.

Dependent Claim 10

The system of claim 9, wherein the metadata includes a title or textual description.

Dependent Claim 11

The system of claim 9, wherein the remote computing device is a smartphone.

Dependent Claim 12

The system of claim 9, wherein the marketplace rule comprises one or more of: a price, sales campaign date, or geographic availability.

Dependent Claim 13

The system of claim 9, wherein the product listing includes a share link.

Dependent Claim 14

The system of claim 13, wherein when the server receives an indication that the share link has been selected by the remote computing device, the server distributes the product listing to a social media network.

Independent Claim 15

15[preamble]: A system for generating distributing multimedia content over a network, comprising:

15[a]: a server configured to control a transaction processing service; and

15[b]: a storage resource communicatively coupled to the server and configured to store an item, wherein the item comprises an identifier, multimedia content, and metadata,

15[c]: wherein the server is configured to: receive the item from the storage resource;

15[d]: execute a widget builder resource configured to generate a product listing, wherein the product listing includes: (i) information associated with the item, (ii) a marketplace rule, and (iii) a clickable buy button;

15[e]: distribute the product listing to a web site or to a social media network based on the marketplace rule;

15[f]: receive an indication that the clickable buy button has been selected by a remote computing device; and

15[g]: provide a checkout screen to the remote computing device for purchasing a product associated with the product listing,

15[h]: wherein transaction processing service is configured to process a payment for a purchase of the product initiated from the checkout screen using the remote computing device.

Dependent Claim 16

The system of claim 15, wherein the metadata includes a title or textual description.

Dependent Claim 17

The system of claim 15, wherein the remote computing device is a smartphone.

Dependent Claim 18

The system of claim 15, wherein the marketplace rule comprises one or more of: a price, sales campaign date, or geographic availability.

Dependent Claim 19

The system of claim 15, wherein the product listing includes a share link.

Dependent Claim 20

The system of claim 19, wherein when the server receives an indication that the share link has been selected by the remote computing device, the server distributes the product listing to a second remote computing device.

TABLE OF EXHIBITS

Exhibit	Description
1001	U.S. Patent No. 11,455,678
1002	Declaration of Todd Mowry
1003	U.S. Patent No. 6,868,403 (“Wiser”)
1004	U.S. Patent Application Publication No. 2008/0183593 (“Dierks”)
1005	U.S. Patent Application Publication No. 2010/0114739 (“Johnston”)
1006	U.S. Patent Application Publication No. 2010/0250382 (“Babaria”)
1007	<i>Reserved</i>
1008	U.S. Patent Application Publication No. 2008/0255962 (“Chang”)
1009	’678 Patent File History
1010	U.S. Provisional Application No. 61/093,917 (“Johnston-Provisional”)
1011	U.S. Patent No. 9,324,098 (“Agrawal”)
1012	U.S. Patent No. 7,565,308 (“Bollay”)
1013	U.S. Patent Application Publication No. 2008/0228595 (“Hill”)
1014	U.S. Patent Application Publication No. 2010/0318665 (“Demmer”)
1015	U.S. Patent Application Publication No. 2011/0154212 (“Gharpure”)
1016	U.S. Patent Application Publication No. 2006/0271437 (“Maggio”)
1017	<i>Reserved</i>

Exhibit	Description
1018	<i>Reserved</i>
1019	<i>Reserved</i>
1020	<i>Reserved</i>
1021	<i>Reserved</i>
1022	<i>Reserved</i>
1023	<i>Reserved</i>
1024	D. Kossmann et al., “An evaluation of alternative architectures for transaction processing in the cloud,” <i>Proceedings of the 2010 ACM SIGMOD International Conference on Management of Data</i> , June 2010.
1025	Order Granting Defendant’s Motion to Dismiss (dated August 1, 2024)
1026	Plaintiff DKR Consulting, LLC’s Notice of Appeal to the United States Court of Appeals for the Federal Circuit (dated August 26, 2024)
1027	<i>Reserved</i>
1028	Request for <i>Ex Parte</i> Reexamination of ’678 Patent, Control No. 90/019,476
1029	Non-Final Office Action in <i>Ex Parte</i> Reexamination of ’678 Patent
1030	United States Court of Appeals for the Federal Circuit, Notice of Docketing (dated August 30, 2024)
1031	Plaintiff-Appellant DKR Consulting, LLC’s Opening Brief (dated October 29, 2024)
1032	ACM Digital Library for Kossmann

Petition for *Inter Partes Review*
of U.S. Patent No. 11,455,678

Exhibit	Description
1033	Decision on Petition in <i>Ex Parte</i> Reexamination of '678 Patent

CERTIFICATE UNDER 37 CFR § 42.24(d)

Under the provisions of 37 CFR § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Petition for *Inter Partes Review* totals 13,708, which is less than the 14,000 words allowed under 37 CFR § 42.24(a)(1)(i).

Respectfully submitted,

Dated: November 22, 2024

/Trishan Egram/
Trishan Egram
Reg. No. 74,075

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2024, I caused a true and correct copy
of the foregoing materials:

- Petition for *Inter Partes* Review of U.S. Patent No. 11,455,678 under 35 U.S.C. § 312 and 37 C.F.R. § 42.104
- Exhibit List
- Exhibits for Petition for *Inter Partes* Review of U.S. Patent No. 11,455,678 (Exhibits 1001–1006, 1008–1016, 1024–1026, 1028–1033)
- Power of Attorney
- Fee Authorization
- Word Count Certification Under 37 CFR § 42.24(d)

to be served via Federal Express on the following correspondent of record as listed
on USPTO Patent Center:

Maulin Shah
Envision IP LLC
2020 Progress Court
Suite 100-158
Raleigh, NC 27608

with a courtesy copy via electronic mail on the following counsel and litigation
counsel of record:

Ronald M. Daignault (rdaignault@daignaultiyer.com)
Chandran B. Iyer (cbiyer@daignaultiyer.com)
Jason S. Charkow (jcharkow@daignaultiyer.com)
Austin Ciuffo (aciuffo@daignaultiyer.com)

DATED: November 22, 2024

/Trishan Eram/
Trishan Eram
Reg. No. 74,075