

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENIUS SPORTS LTD.,
Petitioner,

v.

SPORTSCASTR INC.
d/b/a PANDA INTERACTIVE,
Patent Owner.

IPR2025-00252
Patent 11,871,088 B2

Before JENNIFER S. BISK, BARBARA A. PARVIS, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

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

Genius Sports Ltd. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 8–23 (“the challenged claims”) of U.S. Patent No. 11,871,088 B2 (Ex. 1012, “the ’088 patent”). Petitioner filed a Declaration of Stephen B. Wicker, Ph.D. (Ex. 1001) with its Petition. SportsCastr Inc. d/b/a PANDA Interactive (“Patent Owner”) filed a Preliminary Response (Paper 7, “Prelim. Resp.”). Patent Owner filed a Declaration of Aviel Rubin, Ph.D. (Ex. 2001) with its Preliminary Response.

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2024); Paper 8 (referral to panel after no discretionary denial briefing under the Interim Processes memorandum). Under 35 U.S.C. § 314(a), we may not authorize an *inter partes* review unless the information in the petition and the preliminary response “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons that follow, we do not institute an *inter partes* review.

I. BACKGROUND

A. *Real Parties-in-Interest*

Petitioner identifies Genius Sports Ltd., Genius Sports Media Ltd., Genius Sports Technologies Ltd., Genius Sports UK Ltd., Genius Sports Holdings Ltd., Genius Sports Group Ltd., Maven Topco Ltd., Maven Midco Ltd., Maven Debtco Ltd., and Maven Bidco Ltd. as the real parties-in-interest. Pet. 4–5. Patent Owner identifies SportsCastr Inc. as the real party-in-interest. Paper 5, 1.

B. Related Matters

As required by 37 C.F.R. § 42.8(b)(2), the parties identify the following related matters:

SportsCastr Inc. v. Sportradar Group, AG, 2:23-cv-00472 (E.D. Tex. filed Oct. 5, 2023);

SportsCastr Inc. v. Genius Sports Ltd., No. 2:23-cv-04771 (E.D. Tex. filed Oct. 5, 2023);

IPR2024-01305;

IPR2024-01307;

IPR2024-01308;

IPR2024-01309;

IPR2024-01310;

IPR2024-01311; and

IPR2025-00251.¹

Pet. 5; Paper 5, 1.

C. The '088 Patent

The '088 patent is titled “Systems, Apparatus, and Methods for Providing Event Video Streams and Synchronized Event Information via Multiple Internet Channels.” Ex. 1012, code (54). The '088 patent relates to systems and methods that facilitate providing live stream video and/or audio broadcasts to viewers in real time. *Id.* at 2:48–57. Figure 1A of the '088 patent is reproduced below.

¹ Of note, Petitioner concurrently filed another petition challenging claims 1–7 and 24–34 of the '088 patent in IPR2025-00251. Paper 3, 3. Petitioner also filed a ranking of the two petitions in which it ranked the instant Petition first and the petition in IPR2025-00251 second. *Id.*

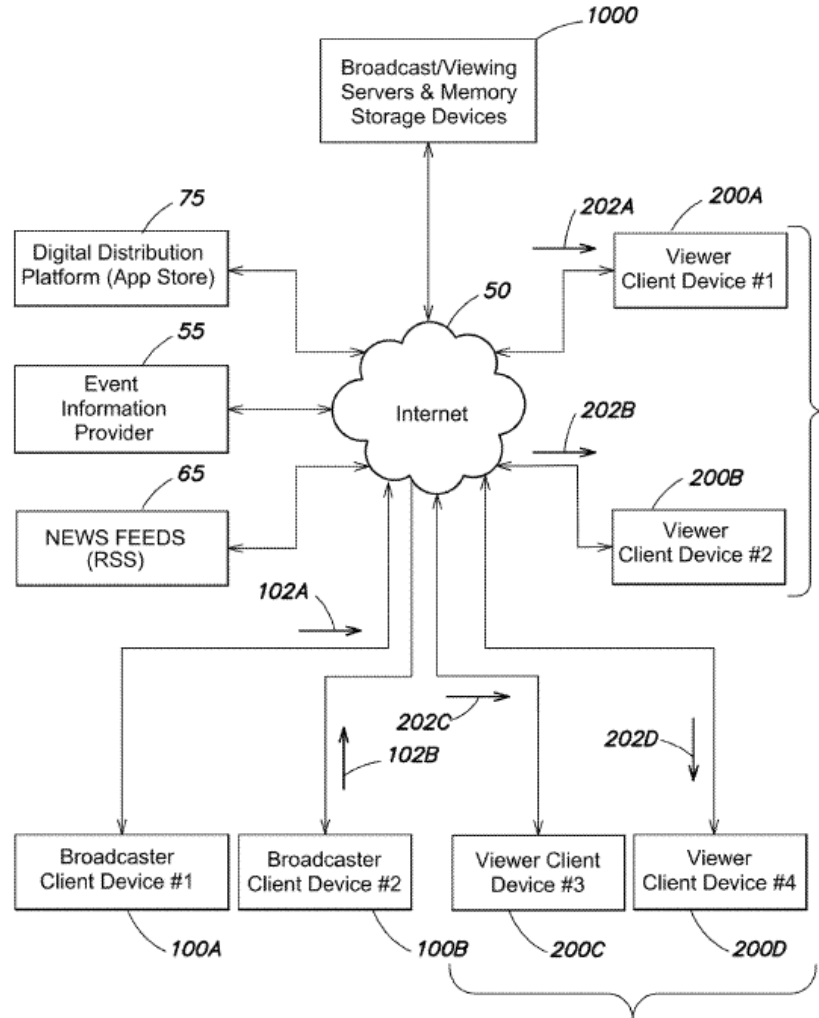


FIG. 1A

Figure 1A is a block diagram of a system facilitating live streaming digital content from multiple broadcasters to multiple viewers. *Id.* at 10:29–32. The system shown in Figure 1A includes broadcaster client devices 100A and 100B, viewer client devices 200A–200D, broadcast/viewing servers and memory storage devices 1000, event information provider 55, one or more news feeds 65, and digital distribution platform 75, all coupled together via Internet 50. *Id.* at 14:21–29. First broadcaster client device 100A provides first live stream of digital content 102A, and copies 202A and 202B of digital content 102A are received by viewer client devices 200A and 200B, respectively. *Id.* at 14:58–64. Similarly, second broadcaster client device

100B provides second live stream of digital content 102B, and copies 202C and 202D are received by viewer client devices 200C and 200D, respectively. *Id.* at 14:64–15:2. Broadcast/viewing servers and memory storage devices 1000 may retrieve news and/or event information germane to a live stream of digital content from news feeds 65 and event information provider 55 and convey the relevant news and/or event information to one or more client devices. *Id.* at 15:2–9.

Figure 2 of the '088 patent is reproduced below.

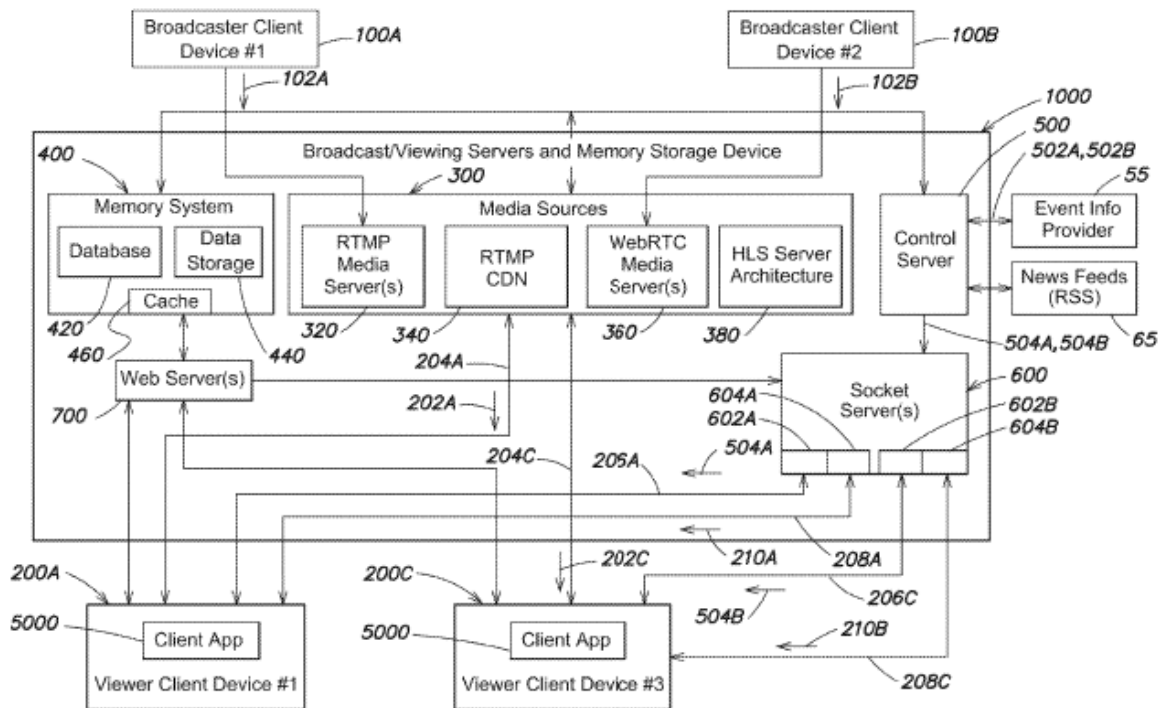


FIG. 2

Figure 2 is a block diagram of broadcast/viewing servers and memory storage devices 1000 in the system of Figure 1A. Ex. 1012, 10:36–38, 18:7–15. Servers/memory storage devices 1000 include, in relevant part, a plurality of media sources 300, control server 500, one or more web servers 700, and socket server 600. *Id.* at 18:26–33, 18:55–19:44. Media sources 300 receive live streams of digital content (102A, 102B) from

broadcaster client devices (100A, 100B) and provide copies (202A, 202C) to viewer client devices (200A, 200C). *Id.* at 18:55–61. Web server 700 supports an application programming interface to facilitate communication between servers/memory storage devices 1000 and client devices. *Id.* at 18:26–33. Control server 500 retrieves news and/or event information germane to the live streams of digital content (102A, 202C) from news feeds 65 and event information provider 55. *Id.* at 19:23–26. Socket servers 600 facilitate communication of synchronized event information retrieved by control server 500 to broadcaster and viewer client devices. *Id.* at 19:48–53. For example, control server 500 may retrieve first score information 504A for a first live sporting event and provide it to socket server 600, which establishes event socket 602A. *Id.* at 21:18–33. First viewer client device 200A connects to event socket 602A via a URL, and first score information 504A is transmitted to first viewer client device 200A. *Id.* at 21:40–54.

D. Illustrative Claim

Of the challenged claims, claims 8 and 13 are independent. Claims 9–12 depend directly or indirectly from claim 8, and claims 14–23 depend directly or indirectly from claim 13. Claim 8 is illustrative of the challenged claims and recites:

8. [8.0] A method, comprising:
 - [8.1] A) receiving, by at least one media source, an audio/video feed of a live event;
 - [8.2] B) providing a first copy of the audio/video feed of the live event from a first media server endpoint of the at least one media source;
 - [8.3] C) transmitting first instructions to a first client device that includes at least one first display to enable the at

least one first display of the first client device to render a first video relating to the live event and render first event information relating to the live event, wherein the first instructions transmitted in C) cause the first client device to:

[8.4] connect to the first media server endpoint of the at least one media source to receive, on a first communication channel between the first media server endpoint and the first client device, the first copy of the audio/video feed of the live event;

[8.5] connect to a first socket of a socket server to receive, on a second communication channel between the first socket and the first client device, first digital content corresponding to the first event information;

[8.6] render, on the at least one first display of the first client device, at least some of the first event information as at least one first user-interactive feature overlaid on or adjacent to the first video relating to the live event; and

[8.7] obtain access to first additional information relating to the live event and/or redirect to a first web site or first app when a first user selects at least a portion of the rendered at least one first user-interactive feature; and

[8.8] D) transmitting second instructions to a second client device that includes at least one second display to enable the at least one second display of the second client device to render the first event information relating to the live event, wherein the second instructions transmitted in D) cause the second client device to:

[8.9] connect to the first socket of the socket server to receive, on a third communication channel between the first socket and the second client device, the first digital content corresponding to the first event information so that the first digital content received at the first client device and the second client device is synchronized and client-by-client latency between the first client device

and second client device to render the first event information is thereby mitigated or significantly reduced;

[8.10] render, on the at least one second display of the second client device, at least some of the first event information as at least one second user-interactive feature; and

[8.11] obtain access to the first additional information or second additional information relating to the live event and/or redirect to the first web site, the first app, a second web site or a second app related to the live event when a second user selects at least a portion of the rendered at least one second user-interactive feature.

Ex. 1012, 68:19–69:11 (Petitioner’s identifiers added in brackets).

E. Prior Art

Petitioner relies on the following prior art:

U.S. Patent Application Publication No. 2015/0163379 A1, filed Dec. 11, 2013, published June 11, 2015 (Ex. 1015, “Herzog”);

U.S. Patent Application Publication No. 2014/0229992 A1, filed Apr. 22, 2014, published Aug. 14, 2014 (Ex. 1016, “Ellis”);

U.S. Patent Application Publication No. 2016/0036910 A1, filed Aug. 4, 2014, published Feb. 4, 2016 (Ex. 1017, “Spivey”); and

U.S. Patent Application Publication No. 2018/0367820 A1, PCT filed Dec. 8, 2015, published Dec. 20, 2018 (Ex. 1050, “Abulikemu”).

F. The Asserted Grounds

Petitioner challenges claims 8–23 of the ’088 patent based on the following grounds (Pet. 8):

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
8, 11, 12	103 ²	Ellis, Spivey
9, 10, 13–23	103	Ellis, Spivey, Abulikemu
8, 11, 12	103	Herzog, Spivey
9, 10, 13–23	103	Herzog, Spivey, Abulikemu

II. ANALYSIS

We now consider Petitioner’s asserted grounds and Patent Owner’s arguments to determine whether Petitioner has met the “reasonable likelihood” standard for institution under 35 U.S.C. § 314(a).

A. *Legal Standards*

A claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed invention and the prior art are such that the claimed invention, as a whole, would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) where in evidence, so-called

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. §§ 102 and 103. Because the ’088 patent’s earliest claim of priority is made to an application filed after March 16, 2013 (the effective date of the relevant amendments), the AIA versions of §§ 102 and 103 apply. *See* Ex. 1012, codes (60), (63).

secondary considerations. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). We also recognize that prior art references must be “considered together with the knowledge of one of ordinary skill in the pertinent art.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (citing *In re Samour*, 571 F.2d 559, 562 (CCPA 1978)).

B. Level of Ordinary Skill in the Art

Citing testimony from Dr. Wicker, Petitioner contends a person of ordinary skill in the art (“POSA”) “would have had at least a bachelor’s degree, or equivalent, in electrical engineering, computer engineering, computer science, or a related field or an equivalent number of years of working experience, and one to two years of experience in networking environments, including at least some experience with live-streaming network architecture.” Pet. 16–17 (citing Ex. 1001 ¶¶ 78–82). Patent Owner contends that an ordinarily skilled artisan “would have [had] a bachelor’s degree in electrical engineering, computer engineering, computer science, or equivalent degree and, in addition, approximately two years of work experience with Internet video streaming, Internet communication, and related protocols.” Prelim. Resp. 20–21 (citing Ex. 2001 § IV.C).

The differences between the parties’ definitions are minor, as recognized by Dr. Rubin (*see* Ex. 2001 ¶ 104), and we do not discern any meaningful differences based on the preliminary record. Accordingly, for purposes of this Decision, we adopt Patent Owner’s definition of the level of ordinary skill in the art. On the present record, we are satisfied that this definition of the level of skill is consistent with the teachings of the

'088 patent and the asserted prior art. Notwithstanding, we would reach the same determination under Petitioner's formulation of the level of skill.

C. Claim Interpretation

In an *inter partes* review, we construe each claim 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), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.

37 C.F.R. § 42.100(b). Accordingly, our claim construction standard is the same as that of a district court. *See id.* Under the standard applied by district courts, claim terms are generally given their plain and ordinary meaning, as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). “There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

Petitioner contends that all claim terms should be given their plain and ordinary meaning. Pet. 8. Petitioner also argues that an ordinarily skilled artisan would have known that a “socket” is “a uniquely addressable communication endpoint on a server where first event information is provided to a VCD [viewer client device].” *Id.* at 31 (citing Ex. 1001 ¶ 190). Thus, Petitioner argues that a “first event socket corresponding to

the first event information” is “a socket where information about one sporting event is provided to VCDs.” *Id.* Patent Owner states that “[e]xcept for the ‘socket’ term for which Patent Owner applies Petitioner’s construction . . . for purposes of [its] preliminary response, Patent Owner agrees that no terms require construction and construes all other terms consistent with their plain and ordinary meaning.” Prelim. Resp. 20.

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

D. Obviousness Ground Based on Ellis and Spivey

Petitioner contends that claims 8, 11, and 12 would have been obvious over the combination of Ellis and Spivey. Pet. 21–40. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 33–61.

1. Ellis

Ellis is a U.S. patent application publication titled “Systems and Methods for Providing Enhanced Sports Watching Media Guidance” that discloses systems and methods for accessing and displaying enhanced sports-related media content. Ex. 1016, codes (54), (57). Figure 1 of Ellis is reproduced below.

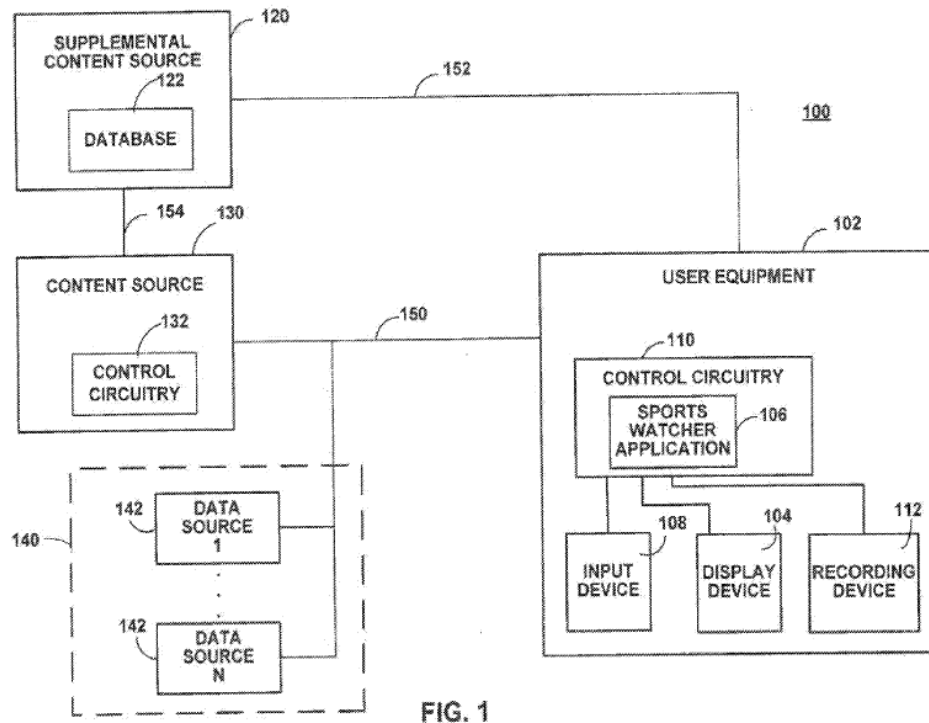


FIG. 1

Figure 1 is a block diagram illustrating interactive media system 100. *Id.* ¶¶ 15, 39. Interactive media system 100 includes user equipment 102, content source 130, supplemental content source 120, and data sources 140. *Id.* ¶ 39. User equipment device 102 receives media content, such as video broadcast programming, from content source 130 via communication path 150. *Id.* ¶¶ 39–40, Fig. 1. User equipment device 102 also receives content, such as real-time sports scores and game summary information, from supplemental content source 120 via communication path 152. *Id.* ¶¶ 39, 41, Fig. 1. Data sources 140 provide data for applications running on user equipment 102. *Id.* ¶ 46.

2. Spivey

Spivey is a U.S. patent application publication titled “Techniques to Broadcast Live Event Data in Real-Time” that discloses a system for

broadcasting live event data in real-time. Ex. 1017, codes (54), (57).

According to Spivey, its techniques “increase the speed at which live event data (e.g. sports scores and breaking news), are broadcast to mobile devices by using topic queues and open duplex communication connections, among other innovative techniques.” *Id.* ¶ 27. Figure 1 of Spivey is reproduced below.

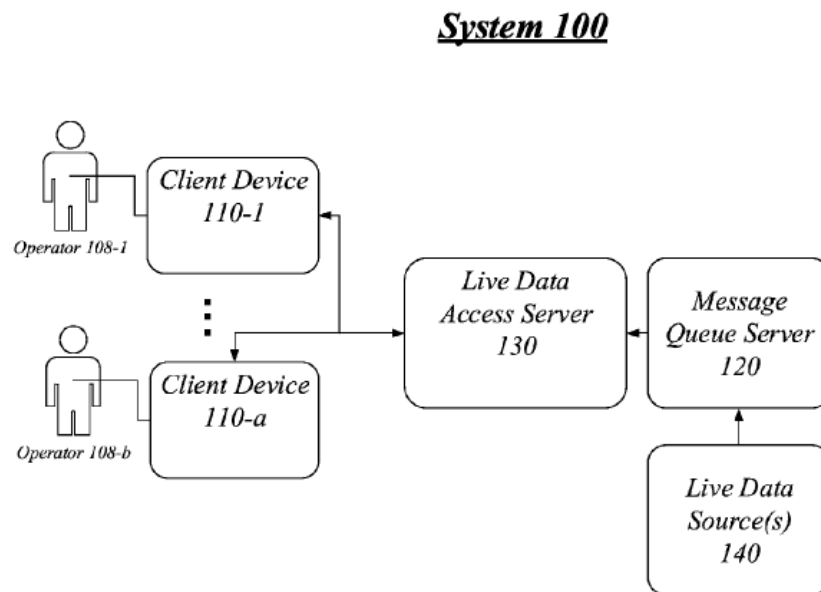


FIG. 1

Figure 1 shows system 100 for broadcasting live event data including client devices 110-1 through 110-a, message queue server 120, and live data access server 130 coupled via one or more networks. *Id.* ¶¶ 3, 34. Message queue server 120 receives live data from live data source(s) 140 and processes the live data so that it can be provided to client devices 110-1 through 110-a. *Id.* ¶¶ 35–37. Live data access server 130 interfaces between message queue server 120 and client devices 110-1 and 110-a. *Id.* ¶ 38.

Figure 4 of Spivey is reproduced below.

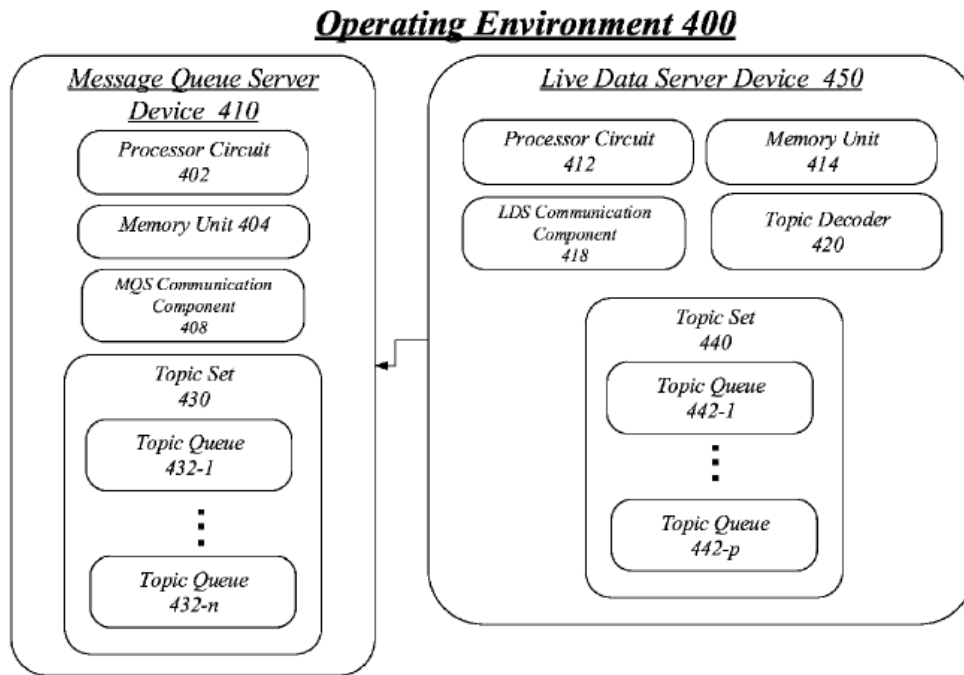


FIG. 4

Figure 4 shows operating environment 400, in which message queue server 120 is implemented as message queue server device 410 and live data server device 450. Ex. 1017 ¶¶ 6, 53. Message queue server device 410 includes communication component 408, topic set 430, and topic queues 432. *Id.* ¶ 54. Live data server device 450 includes live data server communication component 418 that allows live data server device 450 to receive live data and transmit it to message queue server device 410. *Id.* ¶ 55. Live data server device 450 also includes topic decoder 420, topic set 440, and topic queues 442. *Id.* ¶ 56.

3. *Claim 8*

a. Petitioner's Contentions

Claim 8 recites, *inter alia*,

[8.3] C) transmitting first instructions to a first client device that includes at least one first display to enable the at least one first display of the first client device to render a first video relating to the live event and render first event information relating to the live event, wherein the first instructions transmitted in C) cause the first client device to:

[8.4] connect to the first media server endpoint of the at least one media source to receive, on a first communication channel between the first media server endpoint and the first client device, the first copy of the audio/video feed of the live event;

[8.5] connect to a first socket of a socket server to receive, on a second communication channel between the first socket and the first client device, first digital content corresponding to the first event information;

[8.6] render, on the at least one first display of the first client device, at least some of the first event information as at least one first user-interactive feature overlaid on or adjacent to the first video relating to the live event

Ex. 1012, 68:25–50 (Petitioner's identifiers added in brackets). Petitioner contends that the combined system it proposes based on Ellis and Spivey “provide[s] video communication channels between the media source and the VCD [viewer client device], and event information communication channels between an event socket of the socket server and the VCD.”

Pet. 28. According to Petitioner, an ordinarily skilled artisan “would have known that these communication channels would have been established using a known webserver, which transmits instructions to the VCD to establish the connections and allow for the flow of data in the claimed

manner.” Pet. 28–29 (citing Ex. 1001 ¶ 185); *see also id.* at 30–34 (further contentions based on “a known webserver”). Petitioner further contends that it was well-known to use webserver to facilitate communications between clients and servers, including media sources and socket servers. *Id.* at 11 (citing Ex. 1001 ¶¶ 49–53, 127–134).

b. Patent Owner’s Arguments

Patent Owner argues that Petitioner “fails to explain *why* a[n ordinarily skilled artisan] would have allegedly understood that a ‘known webserver’—e.g., a webserver that facilitates communication between client devices and socket server, and client devices and media sources—would be necessary to its Ellis/Spivey combination.” Prelim. Resp. 51. Patent Owner also criticizes Dr. Wicker’s supporting testimony as being conclusory. *Id.* at 52.

Patent Owner additionally argues that the method recited in claim 8 “would not necessarily flow from any server component of Petitioner’s Ellis/Spivey combination.” Prelim. Resp. 52–53 (citing Ex. 2001 ¶¶ 218, 223–231). Patent Owner notes that Ellis’s content source is not a server component that facilitates connections. *Id.* at 53 (citing Ex. 2001 ¶ 229). Furthermore, Patent Owner argues that any attempt “to redesign Ellis architecture with orchestrator-type server components and functionality would indeed run counter to the operation of Ellis.” *Id.* (citing Ex. 2001 ¶¶ 229, 231, 232). In a similar fashion, Patent Owner argues that “Spivey also does not operate using a *facilitator*- or *orchestrator-type* architecture” given that Spivey has an “immediate-data-push architecture” with Spivey’s LDAS “acting as a critical relay point that allows individual client devices to

receive data.” *Id.* (citing Ex. 2001 ¶¶ 230–231, 233). Patent Owner also characterizes the combined Ellis–Spivey system as having a “relay-type architecture” that would operate differently than the claimed “orchestrator-type operation.” *See id.* at 50–52.

c. Analysis

Although claim 8 does not recite a webserver, Petitioner’s obviousness contentions based on Ellis and Spivey rely expressly on the use of a “known webserver” to perform the “transmitting first instructions” limitations excerpted above. *See* Pet. 28–34. Yet Petitioner does not specify how such a webserver would be integrated with the other elements from Ellis and Spivey cited by Petitioner. At best, Petitioner provides a background section on the known use of webserver (see *id.* at 11 (citing Ex. 1001 ¶¶ 49–53, 127–134)), but this does not provide a rationale for integrating a webserver in the Ellis–Spivey combination. We also have considered Petitioner’s cited testimony from Dr. Wicker supporting this background section. The first cited portion, which is located at paragraphs 49–53 of Dr. Wicker’s declaration, supports the premises in the background section, but does not include a rationale for adding a webserver to the Ellis–Spivey combination. *See* Ex. 1001 ¶¶ 49–53. The second cited portion, which is located at paragraphs 127–134 of Dr. Wicker’s declaration, includes a rationale for modifying the Ellis–Spivey combination to include a webserver.³ *See* Ex. 1001 ¶¶ 127–134. But that rationale is completely

³ The cited rationale in Dr. Wicker’s declaration appears to be tailored to support Petitioner’s obviousness contentions in IPR2025-00251, where

unaddressed in the Petition. We decline to assume that Petitioner adopts Dr. Wicker’s testimony about the rationale as its position, because that would amount to improper incorporation by reference under 37 C.F.R. § 42.6(a)(3). *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide at 35–36 (Nov. 2019), *available at* <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf> (citing *Cisco Systems, Inc. v. C-Cation Techs., LLC*, IPR2014-00454 (PTAB Aug. 29, 2014) (Paper 12) (informative)) (stating that “parties that incorporate expert testimony by reference in their petitions, motions, or replies without providing explanation of such testimony risk having the testimony not considered by the Board”).

We also agree with Patent Owner (Prelim. Resp. 51–54) that the addition of a facilitator-type webserver lacks any basis in the disclosures of Ellis and Spivey. Although Spivey mentions the use of a webserver, it is in the context of the message queue server. Ex. 1017 ¶ 35. Ellis mentions the use of a webserver as a content source. Ex. 1016 ¶ 40. Neither reference mentions using a webserver for orchestrating connections between components in the system via transmitted instructions as recited in the challenged claims. Based on the present record, we are not persuaded that Ellis’s and Spivey’s mentions of webserver in other contexts would have motivated an ordinarily skilled artisan to add a webserver to the Ellis–Spivey combination. Nor would the webserver disclosures in Ellis and Spivey have led organically to the facilitator role that Petitioner ascribes to its added webserver element.

Petitioner expressly addresses the rationale in the petition in that case. *See* IPR2025-00251, Paper 1, 26–29.

We additionally agree with Patent Owner (Prelim. Resp. 51) that Petitioner does not explain sufficiently why an ordinarily skilled artisan would have added a facilitator-type webserver to the Ellis–Spivey combination when neither reference teaches or suggests a webserver for facilitating communication between a client and a socket server. Dr. Wicker’s supporting testimony stresses that “webservers were well-known components in streaming systems that were useful for facilitating communication between client devices and socket servers, and client devices and media sources.” Ex. 1001 ¶¶ 128–132. But “obviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention.” *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015). Petitioner fails to provide any persuasive reason with a rational underpinning why an ordinarily skilled artisan would have been motivated to add a webserver to the existing Ellis–Spivey combination.

For these reasons, Petitioner has not shown sufficiently that the combination of Ellis and Spivey teaches the “transmitting first instructions” limitations excerpted above. Based on the present record, Petitioner has not established a reasonable likelihood that it would prevail in showing that the invention of claim 8 as a whole would have been obvious over the combination of Ellis and Spivey.

4. *Claims 11 and 12*

Claims 11 and 12 each depend from claim 8, and Petitioner’s analysis incorporates the same deficiencies related to the “transmitting first instructions” limitations discussed above. *See* Pet. 39–40. For the same

reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing that the inventions of claims 11 and 12 as a whole would have been obvious over the combination of Ellis and Spivey.

E. Obviousness Ground Based on Ellis, Spivey, and Abulikemu

Petitioner contends that claims 9, 10, and 13–23 would have been obvious over the combination of Ellis, Spivey, and Abulikemu. Pet. 40–52. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 62.

1. Abulikemu

Abulikemu is a U.S. patent application publication titled “A Crowd-Sourced Broadcasting System and Method” that discloses “a broadcasting system and method that allows incorporation of user-generated content such as user videos of a live event and user commentary (audio and/or video) about the live event.” Ex. 1050, codes (54), (57).

2. Claims 9 and 10

Claims 9 and 10 depend directly or indirectly from claim 8, and Petitioner’s analysis incorporates the same deficiencies related to the “transmitting first instructions” limitations discussed above for the Ellis–Spivey ground. See Pet. 43–46. For the same reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing that the inventions of claims 9 and 10 as a whole would have been obvious over the combination of Ellis, Spivey, and Abulikemu. See *supra* § II.D.3.c.

3. *Claims 13–23*

Claim 13 is an independent claim with recitations related to “transmitting first instructions” that are similar in scope to claim 8. *Compare* Ex. 1012, 69:61–70:16, *with id.* at 68:25–50. Petitioner relies on the same deficient analysis from claim 8 of the Ellis–Spivey ground for these recitations. *See* Pet. 47–49. Thus, for the same reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing that the invention of claim 13 as a whole would have been obvious over the combination of Ellis, Spivey, and Abulikemu. *See supra* § II.D.3.c.

Claims 14–23 depend directly or indirectly from claim 13, and Petitioner’s analysis incorporates the same deficiencies related to the “transmitting first instructions” limitations discussed above for the Ellis–Spivey ground. *See* Pet. 49–52. For the same reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing that the inventions of claims 14–23 as a whole would have been obvious over the combination of Ellis, Spivey, and Abulikemu.

F. *Obviousness Ground Based on Herzog and Spivey*

Petitioner contends that claims 8, 11, and 12 would have been obvious over the combination of Herzog and Spivey. Pet. 52–74. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 62–72.

1. *Herzog*

Herzog is a U.S. patent application publication titled “Time Synchronization of Video and Data Inside a Mobile Device” that discloses a

mobile device including a processor configured to receive and format live video data, audio data, and meta-data for display on the mobile device, and synchronize selected meta-data with the video and audio for simultaneous display. Ex. 1015, codes (54), (57). Figure 4 of Herzog is reproduced below.

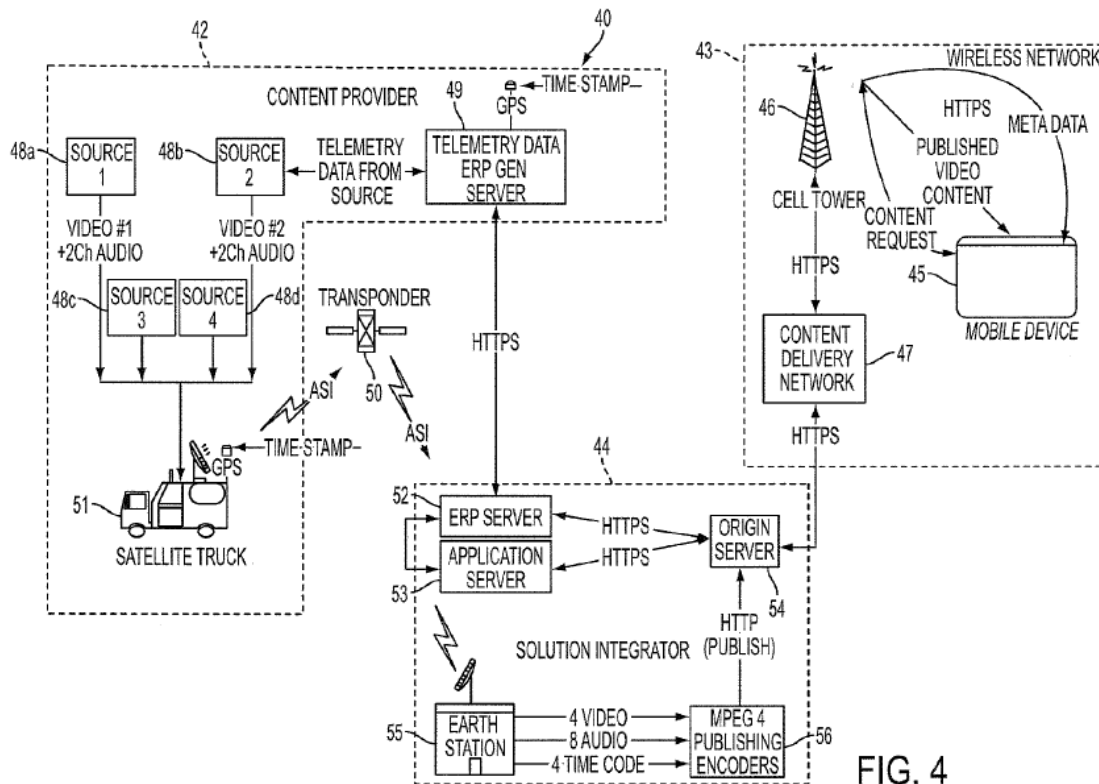


FIG. 4

Figure 4 shows system 40 that provides communications to mobile device 45 in wireless network 43 via content delivery network 47. Ex. 1015 ¶¶ 9, 43. System 40 includes content provider 42, which provides video and audio data of an event occurring in real time, along with meta-data. *Id.* ¶ 45. Content provider 42 provides video/audio streams from imaging sources 48a–48d. *Id.* ¶ 46. Content provider 42 also includes an Enhanced Result Protocol (ERP) generator server 49 configured to receive meta-data from imaging sources 48a–48d. *Id.* ¶ 47. ERP generator server 49 extracts meta-

data parameters that may be of interest to a user, formats the extracted meta-data into an HTTPS protocol, and transmits the formatted meta-data to solution integrator 44. *Id.* Solution integrator 44 transmits the video/audio stream and meta-data to content delivery network 47 for delivery to mobile device 45. *Id.* ¶¶ 48–51.

2. *Claim 8*

a. Petitioner's Contentions

As discussed above, claim 8 recites, *inter alia*,

C) transmitting first instructions to a first client device that includes at least one first display to enable the at least one first display of the first client device to render a first video relating to the live event and render first event information relating to the live event.

Ex. 1012, 68:25–29. The instructions cause the first client device to (1) connect to a media server and receive an audio/video feed of the live event; (2) connect to a socket server to receive digital content corresponding to the first event information; and (3) render on the client device's display some of the first event information overlaid on or adjacent to the video. *Id.* at 68:32–44.

For the “transmitting” limitation, Petitioner cites Herzog's application server 53 and expressly characterizes it as a webserver. Pet. 59–60 (quoting Ex. 1015 ¶ 58). According to Petitioner, application server 53 “is configured to receive the request from the client application software and begin sending the meta-data with the corresponding .JSON [Java Script Object Notation] time stamp via the ERP [Enhanced Result Protocol] server 52 in the solution integrator 44.” *Id.* Petitioner explains that “[t]he application server facilitates streaming between the origin server and VCD

[viewer client device] by receiving a ‘request with the time code call out’ from the VCD, then prompting the origin server to transmit a meta-data stream to the VCDs.” *Id.* at 59 (quoting Ex. 1015 ¶ 51). Petitioner contends that application server 54 “transmits instructions to VCDs to cause the VCDs to request a copy of audio/video feeds of the live event.” *Id.* at 60 (citing Ex. 1015 ¶¶ 28, 51, 84, 86, 88, claim 11). Petitioner further contends that an ordinarily skilled artisan “would have understood that Herzog’s application server transmits instructions to VCDs to establish a connection between its VCDs and media sources.” *Id.* (citing Ex. 1001 ¶¶ 326–327).

b. Patent Owner’s Arguments

Patent Owner argues that Herzog’s “application server 53 fundamentally uses the origin server 54 (and an array of other intermediate components) to reach the mobile device.” Prelim. Resp. 64 (citing Ex. 2001 ¶¶ 306, 308–313). According to Patent Owner, “the application server serves no role in facilitating a connection among, *e.g.*, client devices and socket servers, and client devices and media sources.” *Id.* at 63 (internal quotation omitted) (citing Pet. 26; Ex. 2001 ¶¶ 306–308). Thus, Patent Owner disputes that Herzog’s application server can “transmit[] first instructions to a first client device . . . to enable the at least one first display of the first client device to render a first video relating to the live event.” *Id.* at 64 (emphasis omitted). Patent Owner likewise disputes that Herzog’s application server can “facilitate a client device’s ‘connect[ion] to the first media server endpoint’ and/or ‘connect[ion] to a first socket of a socket server.’” *Id.* (alterations by Patent Owner) (emphasis omitted).

c. Analysis

We agree with Patent Owner that Petitioner does not establish how Herzog's application server acts as a webserver that transmits instructions to clients, or how the application server enables clients to make connections, receive audio/video feed and event information, and then render them on a display, as is recited in claim 8. We have reviewed Petitioner's citations supporting its assertion that "Herzog's application server (*i.e.*, 'webserver') transmits instructions to VCDs to cause the VCDs to request a copy of audio/video feeds of the live event." Pet. 60 (citing Ex. 1015 ¶¶ 28, 51, 84, 86, 88, claim 11). We find that none of the cited passages support the premise of Petitioner's assertion. Rather than transmitting instructions to a client device to enable display of video and event information, Herzog's application server *receives* requests for meta-data *from the client* and then sends the meta-data with a time stamp. Ex. 1015 ¶¶ 51, 58. Further, Herzog's general passages about computing technology (*see, e.g., id.* ¶¶ 84, 86, 88) do not teach the specific transmission of instructions recited in claim 8. Petitioner also has cited Herzog's teaching of "execution of programming in the mobile stations" to implement synchronization (*id.* ¶ 28), but this does not establish that Herzog's application server is transmitting instructions related to that programming. Finally, Herzog's claim 11 is directed to the functions of a "client application," and it does not mention anything about Herzog's application server or instructions that might have been sent by the application server. *Id.* at claim 11.

Petitioner's contentions based on the knowledge of a person of ordinary skill in the art fare no better. *See* Pet. 60 (citing Ex. 1001 ¶¶ 326–327). Petitioner's analysis (*see id.* at 60–62), and Dr. Wicker's supporting

testimony (*see* Ex. 1001 ¶¶ 328–329), focus on how Herzog’s client devices obtain and display streaming content. Pet. 65–67 (citing Ex. 1015 ¶¶ 3, 12, 16, Figs. 4, 6, 7); Ex. 1001 ¶¶ 328–329 (citing same). They do not indicate how or why an ordinarily skilled artisan would have regarded Herzog’s application server as a webserver that transmits instructions enabling clients to display video and event information. In the absence of any persuasive reasoning tied to Herzog’s teachings, we find Petitioner’s contentions unavailing.

For these reasons, we are not persuaded that the combination of Herzog and Spivey teaches transmitting instructions to a client device, thus causing the client device perform various actions that enable the display of live event video and event information, as is recited in claim 8. Based on the present record, we determine that Petitioner has not established a reasonable likelihood that it would prevail in showing that the invention of claim 8 as a whole would have been obvious over the combination of Herzog and Spivey.

3. *Claims 11 and 12*

Claims 11 and 12 each depend from claim 8, and Petitioner relies on the same faulty analysis of the recited “transmitting” step in claim 8. *See* Pet. 74. For the same reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing that the inventions of claims 11 and 12 as a whole would have been obvious over the combination of Herzog and Spivey.

G. Obviousness Ground Based on Herzog, Spivey, and Abulikemu

Petitioner contends that claims 9, 10, and 13–23 would have been obvious over the combination of Herzog, Spivey, and Abulikemu. Pet. 75–85. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 72.

1. Claims 9 and 10

Claims 9 and 10 depend directly or indirectly from claim 8, and Petitioner relies on the same faulty analysis of the recited “transmitting” step in claim 8 from the Herzog–Spivey ground. *See* Pet. 78–81. For the same reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing that the inventions of claims 9 and 10 as a whole would have been obvious over the combination of Herzog, Spivey, and Abulikemu.

2. Claims 13–23

Claim 13 is an independent claim with a “transmitting” limitation that is similar in scope to that of claim 8. *Compare* Ex. 1012, 69:61–70:16, *with id.* at 68:25–44. Petitioner relies on the same faulty analysis from claim 8 of the Herzog–Spivey ground for this limitation. *See* Pet. 81–82; *see also supra* § II.F.2.a. Thus, for the same reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing that the invention of claim 13 as a whole would have been obvious over the combination of Herzog, Spivey, and Abulikemu. *See supra* § II.F.2.c.

Claims 14–23 depend directly or indirectly from claim 13, and Petitioner relies on the same faulty analysis of the recited “transmitting” step in claim 8 from the Herzog–Spivey ground. *See* Pet. 81–85. For the same

reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing that the inventions of claims 14–23 as a whole would have been obvious over the combination of Herzog, Spivey, and Abulikemu.

III. CONCLUSION

For the reasons discussed above, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail with respect to at least one of the claims challenged in the Petition. Therefore, we do not institute an *inter partes* review on the asserted grounds as to any of the challenged claims.

IV. ORDER

Accordingly, it is

ORDERED that the Petition is denied as to all challenged claims, and no *inter partes* review is instituted.

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