

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITCH INTERACTIVE, INC.,

Petitioner,

v.

RAZDOG HOLDINGS LLC,

Patent Owner.

Case No. IPR2025-00307

U.S. Patent No. 9,729,658 B2

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW
OF MAJORITY'S FINAL WRITTEN DECISION**

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I. INTRODUCTION

The Final Written Decision (Paper 47, “FWD”) presents two primary dispositive errors.¹ The first concerns the Board’s construction of the “real time” clauses. While everyone agrees that “real time” streaming means, unlike traditional transmission/download methods, that media content is “updated and displayed as soon as it becomes available, without significant delay,” the Majority’s misapplication of the term within the pertinent claim clauses rewrote the claims.

The first error concerns the destination of where content is streamed and viewed in “real time” (“on the master web-page”), and the timing of real-time content as it is scrolled with the slide tool (“from the master web-page”). FWD 16–18; Paper 37 (“PO Sur-reply”) 3–7. The “real time” concept appears twice in claim 1: (1) content is “*streamed to the master server...in real time...on a master web-page*” and “*viewable...through the master server on the master webpage,*” and (2) the “slide tool program” allows “scrolling or paging through the content”....“through the master server *in real time from the master web-page.*”² The Majority’s error stems from applying Darnell to Claim 1’s “streamed to *the master server*...in real time,” but failing to map that alleged prior art to the additional requirement that

¹ Correcting both errors eliminates every ground.

² All emphasis added unless noted otherwise.

“real-time” content be streamed “on a *master web-page*,” as there is no evidence that Darnell’s on-demand system does so. FWD 17, 31–32, 47–62; *id.*, Moore, dissenting, 9–14 (“Moore Dissent”). The Majority’s analysis of the second “real time” clause similarly errs as it omits any analysis of how Darnell teaches a “real time” slide tool.

Second, the Majority erroneously sustained the Dasgupta grounds on a theory never presented. The Petition argued only that Dasgupta’s use of HTTP disclosed sending webpages. After Patent Owner (“PO”) showed HTTP does not establish webpages, Petitioner shifted theories, arguing a POSITA would have *modified* Dasgupta to make its channel guide a webpage. FWD 88–95; Moore Dissent 15–17.

II. LEGAL STANDARD

The Director reviews FWDs for abuses of discretion, important issues of law or policy, and erroneous findings of fact or law. *See* Director Review Process, § 2.B (June 29, 2026); 37 C.F.R. § 42.75(a), (c). “An abuse of discretion is found if the decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.” *Intell. Bio-Systems, Inc. v. Illumina Cambridge, Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016) (quotations omitted).

Petitioner bore the burden to prove unpatentability by a preponderance of the evidence, 35 U.S.C. § 316(e), and the Petition had to identify the grounds and supporting evidence “with particularity,” *id.* § 312(a)(3); 37 C.F.R. § 42.104(b)(4)–(5). The burden never shifted to PO or the Board. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1374–75 (Fed. Cir. 2016).

III. ARGUMENT

A. The Majority Erred in Construing “Real Time” and Finding the Claims of the ’658 Patent Unpatentable.

1. The Majority Detached the “Real Time” Requirement From the Master Web-Page Limitations.

In relevant part, claim 1 recites “master web-page” in three places—it requires content to be: (1) streamed “in real time...*on a master web-page*,” (2) “viewable...*on the master web-page*,” and (3) scrolled or paged through “in real time *from the master web-page*.” See Ex. 1001, cl.1. The Majority’s construction of “real time,” however, *rewrites claim 1 without explanation by improperly detaching “real time” from the “master web-page” altogether*. See FWD 31–32.

It is agreed that the meaning of “real time” is that content is “updated and displayed as soon as it becomes available, without significant delay.” FWD 17. The dispute is how that timing is applied in the claims, including whether content must be streamed in “real time” solely to the master server or to the master server “on the master web-page.” *Id.* 16–18; PO Sur-reply 3–7. Claim 1 answers that question grammatically. Limitation 1[b2] requires software for organizing content from

multiple sources “streamed to the master server simultaneously in real time from their respective servers *on a master web-page*” and “viewable ... *on the master web-page*.” Ex. 1001, 6:54–63. Limitation 1[b3] separately requires a slide tool for scrolling or paging through that same content “through the master server in real time from the master web-page.” *Id.*, 6:63–7:4.

Despite the explicit claim language, the Majority erred by ambiguously construing “real time” with an amalgamation of separate claim elements:

content data and content applications from multiple content sources or service providers pre-selected by a user *are streamed to a master server* from their respective sources or providers as soon as it becomes available, without significant or perceptible delay, wherein the master server organizes the content on a master web page *making it viewable* to a user on a remote computer device using a slide tool program *for scrolling or paging through the content as soon as it becomes available, without significant or perceptible delay to the user*.

FWD 31–32. This creates ambiguity and renders language elsewhere in the claim redundant. *See TMI Prods. v. Rosen Entm’t Sys., L.P.*, 610 F. App’x 968, 972 (Fed. Cir. 2015) (rejecting construction creating redundancies); Moore Dissent at 2–3.

Beyond merely defining timing, the Majority’s construction rewrote the claim into a source-to-server event, later organization on a webpage, and a separate user-viewability event. It never accounts for 1[b2]’s requirement that content is streamed “in real time . . . on a master web-page” (Moore Dissent 3), and to the contrary, required only that content is streamed from content “sources” to a “master server” “as soon as it becomes available....” This erroneously reads out that content must be

streamed “on a master webpage” in “real time”—not simply stored on a server for later on-demand viewing. It also excludes 1[b3]’s requirement that content is scrolled or paged through “in real time from the master web-page,” requiring instead only the separate requirement that content is “viewable” using a slide tool “as soon as it becomes available....” The Majority erred because a construction must give effect to the chosen terms; not “rewrite claims” or render the terms meaningless. *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999).

While the Majority criticized PO for allegedly assuming claim 1 requires “live” streaming (FWD 51–52), omitting the word “live” from the claim does not change that content must be streamed in “real time...on a master web-page.” PO does **not** contend the invention is limited to a system “where the user is merely a passive consumer of an automatic, ongoing, continuous streaming operation from content sources to the master web-page that is not influenced or directed by the user.” *Id.* A user **may** engage with the “slide tool” by “scrolling or paging” through the provided content. Even if the content is **not** a “live” broadcast, the patent requires content be streamed from the **content “source”** in “real time” through the master server “on a master web-page.” That is, content ***streamed from content sources*** must be “displayed as soon as it becomes available” on the ***master web-page*** “without significant or perceptible delay”—delivery from a ***master server’s*** storage does not, without more, prove display as soon as the content became available from ***its source***.

Nor can the slide-tool limitation in 1[b3] supply what is missing from the separate streaming-and-display limitation in 1[b2]. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (*en banc*). Claim 1 uses “real time” in two distinct places. Limitation 1[b2] requires content from multiple sources to be “streamed to the master server simultaneously in real time . . . on a master web-page” and made “viewable . . . on the master web-page.” Ex. 1001, 6:54–63. Limitation 1[b3] separately requires a slide tool that permits the user to scroll or page through that content “in real time from the master web-page.” *Id.*, 6:63–7:4. The Majority conflated those distinct requirements by reasoning that “the ‘real time’ experience of the user occurs through the use of the slide tool program . . . by scrolling or paging through [content] on the master web page.” FWD 28. But the user’s slide-tool experience cannot replace the separate requirement that the content itself be streamed and made viewable “in real time . . . on a master web-page.” Moore Dissent 3–4. Nor can “real time” mean merely that the user actively scrolls or pages through content, because scrolling and paging necessarily occur when the user performs them in real time. If that alone were enough, “in real time” would add nothing to 1[b3].

At minimum, the Majority’s formulation improperly adds uncertainty rather than resolving it. *See Promptu Sys. Corp. v. Comcast Corp.*, 92 F.4th 1372, 1381 (Fed. Cir. 2024). The clause beginning “wherein the master server . . .” does not explain whether “as soon as it becomes available” refers to availability from the

original content source or later availability after storage on the master server. It also does not explain whether that timing requirement modifies the master server's act of "organiz[ing]" the content, "making it viewable" on the master webpage, the user's "scrolling or paging through" content, or all of those requirements. The claims require real-time streaming and display on the master webpage, while the Majority's construction permits later retrieval and display of stored content after a user request.

2. The Intrinsic Record and Independent Claims Confirm PO's Reading.

The Majority divorces "real-time" from what appears on the "master webpage," ignoring the intrinsic record. The specification consistently links these two concepts. It defines the page as "dynamic" because it "displays streaming content data and content applications . . . in real time." Ex. 1001, 2:56–59. It likewise describes users viewing, scrolling, and navigating dynamic content from multiple sources "in real time." *Id.*, 2:66–3:4; 4:21–26 ("A **dynamic user web-page or master web-page** is a web-page...[with] a slide tool that scrolls or pages through content...from multiple content data sources and/or service providers in real time."); 5:21–26, 6:35–41; Paper 26 ("PO Resp.") 25–26.

Nor did the Majority articulate "real time" constructions for claims 7 or 12, let alone a consistent construction across all claims. Claim terms normally carry the same meaning. *In re Varma*, 816 F.3d 1352, 1363–64 (Fed. Cir. 2016). Yet the Majority said "real time" appears in "slightly different contexts" and its application

“may be slightly different” in claims 7 and 12. FWD 31 n.2. Despite conceding these differences, *the Majority never articulates real time’s meanings in claims 7 and 12 or how they differ from claim 1*. See FWD 20, 29, 31 n.2; *Nearmap US, Inc.*, IPR2022-00734, Paper 43 at 8 (vacating FWD with unclear adopted construction). The FWD’s footnote leaves the governing construction ambiguous, while its later claim 7 and 12 analyses import claim 1’s formulation without reconciling the materially different claim language. Thus, the Director should vacate the FWD as it was based on an ambiguous construction and lacked analysis for claims 7 and 12.

3. Under the Correct Construction, All Grounds Fail.

The construction error—detaching “real time” from the “master web-page”—is dispositive. PO’s reading applies the agreed temporal meaning of “real time” to the claim language actually recited: claim 1 requires content “streamed to the master server simultaneously in real time . . . on a master web-page” and scrolling or paging through that content “in real time from the master web-page”; claim 7 requires content “simultaneously streamed to the master server” from multiple servers “in real time to an account belonging to the user”; and claim 12 requires a user to navigate through content “through [the] master web-page in real time.” Ex. 1001, cls. 1, 7, 12; PO Resp. 15–26; PO Sur-reply 3–14; Moore Dissent 4 (“Patent Owner is relying on the actual the [*sic.*] language of the claim.”).

Had the Majority applied the correct construction, Ground 1 would have failed. That ground relies on Darnell for the real-time limitations, but Darnell is the kind of aggregator PO distinguished: it retrieves content items, merges them with previously stored items, stores the merged set in a database, and transmits a set of stored items only in response to later client/user requests. PO Resp. 34–52; PO Sur-reply 15–20. Darnell therefore does not disclose content streamed, scrolled, paged through, or navigated in real time on or through a master webpage as claims 1, 7, and 12 require. Because Petitioner did not rely on Kim or Dasgupta to attempt to cure that defect in the Darnell grounds, Grounds 1 fails.

Ground 2 would likewise have failed as it does not teach or suggest the real-time limitations. Dasgupta discloses, at most, a set-top-box guide with static channel icons, advertisements, and optional HTTP communication—not real time content streaming on a master webpage or allowing scrolling/paging/navigating through such content in real time. PO Resp. 54–66; PO Sur-reply 20–25.

B. The Majority Erred Even Under Its Own Construction of Real Time.

Even accepting its “real time” construction, the Majority still erred in finding the claims unpatentable. As explained below, Darnell Grounds 1A-1B fail because Darnell does not make content “viewable” “as soon as it becomes available.” Dasgupta Grounds 2A-2B fail because the Majority improperly considered Petitioner’s untimely Dasgupta obviousness theory and failed to require evidence of

motivation to combine or expectation of success. Additionally, the Majority erred by failing to provide any explanation as to how Darnell or Dasgupta allegedly meet its “real time” construction at all. *See Nearmap*, IPR2022-00734, Paper 43 at 8–9.

1. Darnell’s Store-then-Serve Workflow Is Insufficient.

a. Darnell’s On-Demand User Requests and Incidental Buffering Do Not Satisfy “Real Time.”

Darnell uses a retrieve–merge–store–then–request workflow. Its feed tracker retrieves items “for storage periodically and/or as content feeds are updated.” Ex. 1004 ¶¶74. Figure 9A is a process “for retrieving and storing content items for subsequent transmission to client computer 400.” *Id.* ¶¶106. The server retrieves a current set, merges it with historical items, and stores the merged set in database 520. *Id.* ¶¶106–08. Its transmission step occurs only “[i]n response to a request.” *Id.* ¶¶109. In Figure 9B, a user causes the client to request a set; the server retrieves it “from server memory” and transmits it; the client then displays a subset. *Id.* ¶¶110. Scrolling near or beyond the list’s end causes another request for “additional” items from server memory. *Id.* ¶¶111–12; Ex. 2010 ¶¶114–16, 120–22, 130–31.

Those passages may show that Darnell eventually serves stored items after a request but do not show that it displays newly available content as soon as it becomes available under the Majority’s construction. FWD 31–32. This is not a request for a new construction of “streamed,” but rather the problem is evidentiary. The FWD identifies no evidence connecting source availability, tracker retrieval, database

storage, user request, and display in a way that satisfies real-time display on a master webpage. Darnell may transmit stored items after a request, but the record does not show its “master webpage” receives, displays, or makes newly available items viewable as soon as available. As the dissent stated, retrieving an item “for storage” does not establish real-time display on the master webpage. Moore Dissent 8–11.

The Majority also identified no evidence tying Darnell’s display to when content becomes available. It instead reasoned that PO conceded “storage is not precluded” and that some delay may occur. FWD 49–50 (citing Ex. 1082, 125:19–22, 126:3–10; Paper 45, Tr. 41:26–42:14, 53:20–25). That PO agrees that some storage and delay are not precluded, does not address whether Darnell’s database-backed, request-dependent workflow satisfies the Majority’s construction of “real-time.” PO Resp. 39–42; PO Sur-reply 15–18. A brief streaming buffer may preserve the recited temporal relationship with the user navigating between “real time” content, but there is no evidence Darnell provides requested stored content or that its display updates as soon as the newly available content becomes available. *Id.*

The Majority also cited the patent’s definition of “content data”—information “stored remotely on servers”—reasoning that any transmission follows some storage. FWD 50 (quoting Ex. 1001, 4:1–3). That describes content storage at its *source* (a separate limitation)—not at the “master server.” That passage does not transform every later content storage in intermediate databases—and every delivery

whenever requested—into “real-time” display. The question was whether Petitioner proved that Darnell displays content as soon as it becomes available. Saying the claim does not “preclude” Darnell’s process substitutes possibility for proof and shifts the § 316(e) burden. *Magnum Oil Tools*, 829 F.3d at 1375–81.

b. The Majority Erred Finding Darnell’s Scrollbar Is “Real-Time.”

The Majority inferred that Darnell’s scrollbar is the claimed “slide tool” that issues requests to the server and cited Dr. Martin’s ¶188. FWD 51. But ¶188 establishes, at most, that scrollbars were known tools for navigating “displayed content.” Ex. 1002 ¶188. It does not say the slide tool requests newly available content or that Darnell displays content “as soon as it becomes available, without significant or perceptible delay.” Darnell says a scroll request “fetches additional items” from server memory. Ex. 1004 ¶112. Indeed, the Majority identified no evidence that the relationship between when content *becomes available at its source* and *when it becomes viewable on the user interface, let alone that it is viewable “as soon as it becomes available.”* Nor did the Majority attempt to explain how Darnell teaches a slide tool for scrolling/paging/navigating content “in real time on the master web-page.”³ See *Nearmap*, IPR2022-00734, Paper 43 at 7–8.

Dr. Martin later asserted that Darnell “dynamically updates” and gives

³ The same error applies to the Majority’s conclusions regarding claims 7 and 12.

“continuous, real-time access,” but the cited passages establish only a script-based webpage and a scrollbar. Ex. 1002 ¶¶189–91 (citing Ex. 1004¶¶ 41, 54, 67). Paragraph 67 says the page may contain a script-based feed-reader module; paragraph 54 identifies scrollbar 320. Neither connects newly available items to the display, and the declaration never reconciles Figure 9’s database-and-request sequence. *See TQ Delta, LLC v. Cisco Sys., Inc.*, 942 F.3d 1352, 1358, 1361–62 (Fed. Cir. 2019) (holding conclusory expert testimony not substantial evidence).

2. The Dasgupta Modification Theory Should Be Rejected.

a. The Reply Improperly Added Allegations of Modification.

For limitation 1[b2], the Petition’s only particularized theory was that HTTP meant Dasgupta already sends webpages. After the generic heading that “Dasgupta discloses or suggests this limitation,” it reasoned that HTTP governs browser/server communication and concluded: “Accordingly, POSITAs would have understood that subsystem 202 sends webpages to subsystem 204 using the HTTP (*on a master web-page*).” Pet. 67–69 (citing Ex. 1002 ¶325) (emphasis in original). The incorporated declaration likewise said a skilled artisan “would have understood that subsystem 202 sends webpages.” Ex. 1002 ¶325. Neither proposed modifying Dasgupta, explained how to do so, or offered a reason for that modification.

In context, the Petition’s webpage argument was not a modification theory; it was a disclosure theory. Petitioner argued that because Dasgupta permits HTTP

communications, a POSITA would understand that Dasgupta already sends webpages. Pet. 68–69. After PO showed that HTTP does not establish webpages, Petitioner shifted in Reply to a new theory that a POSITA would have modified Dasgupta to make its channel guide a webpage. The Majority acknowledged that the Reply “at first glance” appeared to change positions but treated it as clarification because Ground 2A invoked § 103 and used the generic phrase “discloses or suggests.” FWD 88–91. That was error. A generic obviousness label cannot satisfy the Petition’s particularity obligation or preserve every obviousness path. *See Yita LLC v. MacNeil IP LLC*, 69 F.4th 1356, 1366–67 (Fed. Cir. 2023); *Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1377 (Fed. Cir. 2023).

Here, every claim 1 subsection began with “Dasgupta discloses or suggests,” but the webpage discussion asserted only what a skilled artisan would understand Dasgupta sends. Pet. 58–74; Moore Dissent 15–16 (“nowhere in the section addressing 1[b2]...does Petitioner argue that it would have been *obvious* to use web pages.”). Thus, accepting the new Reply theory violated Rule 42.23(b).

b. The New Theory Lacks Motivation and Evidence.

The Petition’s reason to combine Dasgupta and Darnell addressed adding Darnell’s feed-subscription and security features so users could configure sources and prevent unauthorized access. Pet. 56–58; Ex. 1002 ¶¶297–301. It did not propose changing Dasgupta’s channel guide to a webpage. The Reply’s observation that

HTTP and webpages were known shows, at most, technical possibility. Pet. Reply 21–22. It does not explain why a skilled artisan would choose a webpage for Dasgupta’s set-top-box guide, how the modification would satisfy a real-time master-webpage, or why such a modification would succeed. PO Sur-reply 22 & n.4.

Nor did the Majority identify evidence connecting Dasgupta’s timing to its claim construction. Dasgupta says its communications may use HTTP among several listed protocols. Ex. 1006 7:20–29. Dr. Martin described HTTP as carrying “data, including web pages,” relying on Dasgupta 7:36–43, which addresses presentation or viewing, not when the content becomes available or whether it does so without significant delay. Ex. 1002 ¶¶325–326. He provides no evidence that Dasgupta actually uses HTTP to transmit a webpage in real time and gave no reason to so modify Dasgupta. *Id.* Evidence that a protocol *can* carry webpages does not prove Dasgupta *does so*, supply a reason to modify it, or show that content becomes viewable through the alleged page and slide tool as soon as the content becomes available. FWD 92–96; Moore Dissent 14–17; *Corephotonics, Ltd. v. Apple Inc.*, 84 F.4th 990, 1004 (Fed. Cir. 2023). Ground 2 therefore cannot sustain claims 1–11.

IV. CONCLUSION

For the above stated reasons, PO respectfully requests the Director grant review and reverse the Majority’s determination that claims 1–18 are unpatentable.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW OF MAJORITY'S FINAL WRITTEN DECISION** was served on August 26, 2026, by email on counsel for Petitioner at the following addresses:

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