

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NL GIKEN INC.,

Plaintiff,

v.

AMAZON.COM, INC.,
AMAZON.COM SERVICES LLC,
AMAZON WEB SERVICES, INC., and
TWITCH INTERACTIVE, INC.,

Defendants.

Case No. 1:24-cv-00028-MN

DEFENDANTS' INITIAL INVALIDITY CONTENTIONS

NL Giken Exhibit 2002
Amazon v. NL Giken
IPR2025-00407

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I. INTRODUCTION

Pursuant to Sections 6(d) of the Court’s Scheduling Order dated June 18, 2024 (Dkt. 32), Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Web Services, Inc., (collectively, “Amazon”) and Defendant Twitch Interactive, Inc. (“Twitch”) (collectively, “Defendants”) respectfully submit these initial invalidity contentions (“Initial Invalidity Contentions”) with respect to the claims identified by Plaintiff NL Giken Inc. (“Giken”) in its initial infringement contentions.

In its infringement contentions served October 4, 2024, Giken asserted claims 1-3, 5-8, and 10-12 of U.S. Patent No. 10,880,592 (the “’592 Patent”); claims 1-2, 4, 6, and 15 of U.S. Patent No. 8,094,236 (the “’236 Patent”); claims 1, 9-10, and 12-15 of U.S. Patent No. 8,677,391 (the “’391 Patent”); claims 4-6 and 8-14 of U.S. Patent No. 9,319,615 (the “’615 Patent”); and claims 1-12 of U.S. Patent No. 9,948,968 (the “’968 Patent”) (collectively, the “Asserted Claims” and “the Asserted Patents”). Defendants contend that each of the Asserted Claims is invalid under at least 35 U.S.C. §§ 101, 102, 103, and/or 112. Defendants reserve the right to supplement these Initial Invalidity Contentions pursuant to the Federal Rules of Civil Procedure, the Court’s Local Rules, and/or any other order or schedule entered by the Court.

II. PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS

A. No Waiver.

Nothing in these Initial Invalidity Contentions is intended, nor should be construed, as a waiver of any claim construction argument, noninfringement position, or argument under 35 U.S.C. § 112. Defendants’ statements herein (including the accompanying claim charts) reflect Defendants’ present understanding of the purported scope of the claims as alleged by Giken in its infringement contentions (as best those contentions can be understood in light of their present deficiencies). *Bristol-Myers SquibbCo. v. Ben Venue Labs., Inc.*, 246 F.3d 1368, 1378 (Fed. Cir.

2001) (“it is axiomatic that that which would literally infringe if later anticipates if earlier”). For the avoidance of doubt, these contentions are not intended to present or argue in favor of any construction of the Asserted Claims, and Defendants expressly reserve the right to present constructions that differ from any construction that may be alleged to underlie these contentions. The Court established separate deadlines for the parties’ proposed claim constructions, and Defendants will disclose their proposed constructions accordingly. These Initial Invalidity Contentions do not constitute an acquiescence to Giken’s interpretation of any claims to the extent they depart from the plain meaning of the Asserted Claims and from the proper scope of the claims as may be subsequently construed by the Court. Defendants disagree with Giken’s apparent positions as to the purported scope of the Asserted Claims to the extent they seek to expand the scope of the Asserted Claims beyond their proper construction and to the extent those apparent positions can be understood from Giken’s deficient infringement contentions.

The Asserted Claims have not yet been construed by the Court in this case and, thus, Defendants have not yet had the opportunity to compare the Asserted Claims of the Asserted Patents (as construed by the Court) with the prior art. Defendants reserve the right to amend, supplement, or materially modify its Initial Invalidity Contentions after the claims have been construed by the Court in this case. Defendants also reserve the right to amend, supplement, or materially modify their Initial Invalidity Contentions in response to any claim construction positions that Giken may take. Defendants also reserve the right to assert that a claim is indefinite, not enabled, or fails to meet the written description requirement of 35 U.S.C. § 112 based on any claim construction position Giken may take in this case or based on any claim construction the Court may adopt in this case.

B. No Admission.

Nothing disclosed herein is an admission or acknowledgement that any product accused

of infringement by Giken in its infringement contentions (the “Accused Products”), or any of Defendants’ other products or services, infringes any of the Asserted Claims.

Defendants further note that Giken appears to rely upon overly broad constructions of the Asserted Claims. At the same time, Giken’s infringement contentions are in most places too general and vague to discern Giken’s infringement theories and how exactly Giken contends each Accused Product meets or practices each element of the Asserted Claims. As a result, Defendants have been prejudiced in their ability to prepare these Initial Invalidity Contentions. In addition, Giken’s infringement contentions, in many cases, fail to put Defendants on notice of Giken’s interpretation of the Asserted Claims, further prejudicing Defendants’ ability to identify relevant prior art. In addition, Giken has not properly identified any theories of infringement under the doctrine of equivalents. Defendants have relied on Giken’s apparent representation that it has no doctrine of equivalents theories in preparing these Initial Invalidity Contentions, and any attempt by Giken to present an untimely doctrine of equivalents argument would be severely prejudicial to Defendants. To the extent that Giken is later permitted by the Court to amend its contentions to cure the deficiencies of its current contentions or to pursue any currently undisclosed doctrine of equivalents theories, Defendants’ expressly reserve the right to supplement or amend these Initial Invalidity Contentions to account for such amendments.

To the extent that any of the prior art references disclose the same functionality or feature of any of the Accused Products, Defendants reserve the right to argue that said feature or functionality does not practice any element of any of the Asserted Claims, and to argue, in the alternative, that if said feature or functionality is found to practice any element of any of the Asserted Claims, then the prior art reference demonstrates that the element is not novel, is obvious, and/or is otherwise not patentable.

Attached are representative claim charts that identify where the elements of the Asserted Claims of the Asserted Patents may be found in the prior art and further identify why those elements are not novel or non-obvious. The references cited in the attached claim charts may disclose the limitations of the Asserted Claims expressly and/or inherently. The suggested obviousness combinations may be presented in conjunction with or in the alternative to Defendants' contentions regarding anticipation. These obviousness combinations should not be construed to suggest that any reference included in any combination is not anticipatory in its own right. Further, to the extent that Giken contends that any of the references identified do not constitute available prior art under 35 U.S.C. § 102, Defendants reserve the right to rely upon other prior art references in the same patent family with substantially identical disclosures as evidence of invalidity based on the same theories as those disclosed below.

C. Reservation of Rights.

Prior art not currently included in this disclosure may become relevant. Defendants are currently unaware of the extent, if any, to which Giken will contend that limitations of the Asserted Claims are not disclosed in the prior art identified by Defendants. Defendants reserve the right to identify other references that would have made the addition of the allegedly missing limitation to the disclosed device or method obvious or show that the allegedly missing limitation would have been known or readily apparent to one of ordinary skill in the art at the time of the invention in light of the disclosure of the prior art at issue. Defendants further reserve the right to rely on any of the references being produced herewith in order to demonstrate the state of art at the alleged times of invention and as evidence of the knowledge of one of ordinary skill in the art in support of any motivations to modify or combine the charted prior art references with other references or knowledge.

Giken has not yet produced other prior art of which it may be aware but is not yet known

to Defendants. Defendants may seek to supplement their Initial Invalidity Contentions with prior art contained in such production once they have had a fair opportunity to review, analyze, and chart such prior art. Defendants reserve the right to amend their Initial Invalidity Contentions with any additional potential prior art known by Giken but not yet disclosed to Defendants.

Defendants provide these Initial Invalidity Contentions only for the claims asserted by Giken but reserve the right to seek invalidation of all claims in each of the Asserted Patents.

D. Ongoing Investigation.

Defendants' discovery and investigation in connection with this lawsuit are ongoing, including discovery from Giken. Thus, these Initial Invalidity Contentions are based on information obtained to date. Defendants expressly reserve the right to amend their disclosures and document production to account for evidence uncovered as their investigations continue. Such amendments include identifying and relying on additional references that may result from Defendants' further searches and analysis. Defendants reserve the right to supplement these contentions in light of any additional prior art of which Giken is aware and did not disclose to Defendants in discovery, or that might be subsequently disclosed by Giken in response to Defendants' discovery requests. Defendants anticipate issuing subpoenas to third parties believed to have knowledge, documentation and/or corroborating evidence concerning some of the prior art listed herein and/or additional prior art. These third parties include, but are not limited to, the authors, employers of authors, inventors, assignees, or former or current employees of assignees, of the references identified in these Initial Invalidity Contentions. For example, Defendants anticipate issuing subpoenas to potential prior artists including but not limited to individuals and entities responsible for the development of prior art systems. Defendants may also commission reverse engineering studies of certain product prior art identified herein. Discovery from these reverse engineering studies likely will reveal information that impacts the disclosures and

contentions herein. Defendants reserve the right to supplement these contentions in light of any newly discovered information produced by these third parties and reverse engineering studies from which Defendants may seek discovery.

III. ANTICIPATION AND OBVIOUSNESS (35 U.S.C. §§ 102 AND 103)

A. Legal Standard.

Under 35 U.S.C. § 102, “[a] patent is invalid for anticipation if a single prior art reference discloses each and every limitation of the claimed invention.” *Schering Corp. v. Geneva Pharm., Inc.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003). A prior art reference may anticipate a claim limitation even though the limitation is “not expressly found in that reference.” *MEHL/Biophile Int’l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 1999); *Standard Havens Prod., Inc. v. Gencor Indus., Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991) (“An anticipatory reference ... need not duplicate word for word what is in the claims.”). Instead, “[a]nticipation can occur when a claimed limitation is ‘inherent’ or otherwise implicit in the relevant reference.” *Standard Havens*, 953 F.2d at 1369; *see also Schering Corp. v. Geneva Pharm.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003) (“[A] prior art reference may anticipate without disclosing a feature of the claimed invention if that missing characteristic is necessarily present, or inherent, in the single anticipating reference.”). In addition, the prior art document “may incorporate subject matter by reference to another document such that the incorporated material becomes part of the host document for the purposes of anticipation.” *Apple Inc. v. Int’l Trade Comm’n*, 725 F.3d 1356, 1362 (Fed. Cir. 2013).

Under 35 U.S.C. § 103, a patent may not issue “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” Pre-AIA 35 U.S.C. § 103(a). Thus, “[a]n invention which

has been made, and which is new in the sense that the same thing has not been made before, may still not be patentable if the difference between the new thing and what was known before is not considered sufficiently great to warrant a patent.” *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966). Obviousness is a question of law based on underlying factual findings concerning: “(1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness,” otherwise known as “secondary considerations.” *Miles Labs., Inc. v. Shandon, Inc.*, 997 F.2d 870, 877 (Fed. Cir. 1993); *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1339 (Fed. Cir. 2008).

To prove that a patent is obvious, a party must demonstrate “that a skilled artisan would have had reason to combine the teaching of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success from doing so.” *Eurand, Inc. v. Mylan Pharms. Inc.*, 676 F.3d 1063, 1069 (Fed. Cir. 2012); *see also KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”). Although an analysis of any teaching, suggestion, or motivation to combine known elements might provide “helpful insight[s],” the overall obviousness inquiry must be “expansive and flexible.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 415 (2007) (rejecting “rigid and mandatory formulas” that “that deny factfinders recourse to common sense”).

A reason to combine may be found explicitly or implicitly, in one or more of the following:

1. A person of ordinary skill in the art’s knowledge or common sense;
2. The prior art references themselves;
3. The subject matter acknowledged as prior art in the asserted patent;

4. The interrelated teachings of multiple prior art references identified herein;
5. The nature of the problem to be purportedly solved by the asserted patent and the existence of similar improvements in similar applications;
6. Design incentives and other market forces, including the advantages of creating a superior and more desirable product and the effects of demands known to the design community or present in the marketplace;
7. The ability to implement the alleged invention as a predictable variation of the prior art;
8. Combining prior art elements according to known methods to yield predictable results;
9. Improvements in similar devices;
10. Applying a known technique to a known device (method or product) ready for improvement to yield predictable results;
11. Any needs or problems known in the field and purportedly addressed by the asserted patent, *i.e.*, “obvious to try”;
12. The number of identified, predictable solutions to the problem(s) purportedly addressed by the asserted patent;
13. The simple substitution of one known elements for another to obtain predictable results; and
14. Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

See KSR Int’l Co., 550 U.S. at 416-418, 421. Defendants discuss certain of these reasons more specifically below and in the attached charts. The fact that other reasons are not discussed more specifically should not be interpreted as an admission or concession that it does not apply. To the contrary, the discussion below simply provides more explanation of certain reasons.

Finally, the use of hindsight is not permitted when determining whether a claim would have been obvious to one having ordinary skill in the art. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421, (2007) (cautioning against “the distortion caused by hindsight bias” and obviousness “arguments reliant upon *ex post* reasoning”). To protect against the improper use of hindsight

when assessing obviousness, a court is required to consider secondary considerations or objective indicia of non-obviousness. *Crocs, Inc. v. Int’l Trade Comm’n*, 598 F.3d 1294, 1310 (Fed. Cir. 2010). Secondary considerations of nonobviousness may include “commercial success, industry praise, unexpected results, copying, industry skepticism, licensing, and long-felt but unsolved need.” *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc.*, 699 F.3d 1340, 1349 (Fed. Cir. 2012). To the extent Giken has offered in written discovery responses evidence they contend establishes non-obviousness, at a minimum, Giken has not identified nor established a nexus to the claimed systems or methods, and in particular, to the alleged inventive aspect of the asserted claims over the prior art. Discovery has just begun and Giken has not substantiated any of the alleged “evidence” identified thus far, and Defendants have not yet had the opportunity to obtain discovery on such alleged “evidence.” Defendants reserves the right to challenge the alleged “evidence” Giken has offered in its written discovery responses, and any additional “evidence” identified in the future.

B. Prior Art that Anticipates and/or Renders Obvious Each Asserted Claim of the ’592 Patent.

Defendants contend that the prior art references identified in Exhibits 592.A-F and/or described below anticipate and/or render obvious, alone or in combination, one or more of the Asserted Claims of the ’592 Patent. Each prior art reference identified below is prior art under at least 35 U.S.C. § 102(a), (b), and/or (e) (pre-AIA).

1. Prior Art Patents and Published Patent Applications

Prior Art Patents and Published Applications	Issue/Publication Date
U.S. Patent App. Pub. No. 2005/0160465 (“Walker”)	July 21, 2005
U.S. Patent App. Pub. No. 2002/0194619 (“Chang”)	December 19, 2002
U.S. Patent App. Pub. No. 2008/0086743 (“Cheng”)	April 10, 2008

Prior Art Patents and Published Applications	Issue/Publication Date
U.S. Patent App. Pub. No. 2004/0179811 (“Kikkawa”)	September 16, 2004

2. Prior Art Products and Systems

Prior Art Products/Systems	Documentation	Date of Availability
Helius System	See Exhibit 592.E	by 2006
2NetFX	See Exhibit 592.F	by 2001

In addition to the products in the chart above, Defendants continues to investigate the identities of the individuals or entities involved in the first sale, offer for sale, or public use of prior art products that were made using the system recited by the asserted claims of the ’592 Patent. Defendants will produce additional documents relating to the invalidity of the asserted claims by those products as they become available.

3. Claim Charts

Defendants have attached charts identifying prior art that anticipates and/or renders obvious each of the Asserted Claims of the ’592 Patent in **Exhibits 592.A-F**, collectively referred to as the “’592 Patent Invalidity Charts.”

For each Asserted Claim that is anticipated by a reference, the corresponding claim chart includes a citation to that reference for each limitation. While Defendants have identified at least one citation per limitation present in a reference, each and every disclosure of the same limitation in the same reference is not necessarily identified. In an effort to focus the issues, Defendants cite only portions of identified references, even where a reference may contain additional support for a particular claim element. Persons of ordinary skill in the art generally read a prior art reference as a whole and in the context of other publications and literature. Defendants reserve

the right to rely on uncited portions of the prior art references and on other publications and expert testimony to provide context and as aids to understanding and interpreting the portions that are cited. To the extent any limitation is deemed not to be exactly met by an item of prior art, then any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge, skill, or creativity of those skilled in the art. Where Defendants cite to a particular figure in a prior art reference, the citation should be understood to encompass the caption and description of the figure and any text relating to the figure in addition to the figure itself. Conversely, where a cited portion of text refers to a figure, the citation should be understood to include the figure as well.

Defendants have provided exemplary combinations in Exhibits 592.A-F for specific claim limitations which identify exemplary secondary references and exemplary disclosures therefrom. Each prior art reference evidences teachings, suggestions, motivations, and/or other reasons to combine it with the other identified references in ways that render obvious all of the asserted claims of the '592 Patent. In addition to any specific combinations of prior art disclosed using claim charts, Defendants reserve the right to rely on any combination of prior art references disclosed in these contentions.

To the extent any item of prior art cited above is deemed not to disclose, explicitly or inherently, any limitation of an asserted claim of the '592 Patent, Defendants reserve the right to argue that any difference between that prior art and the corresponding patent claim would have been either inherent in the art or obvious to a person of ordinary skill in the art, even if Defendants have not specifically denoted that the art is to be combined with the knowledge of a person of ordinary skill in the art.

4. The '592 Patent is Obvious Over the Prior Art.

In addition to the references cited on the face of the '592 Patent, the admitted prior art in the specification of the '592 Patent, and the prosecution history of the '592 Patent, the prior art references identified in Exhibits 592.A-F and listed above disclose the elements of the Asserted Claims, either explicitly, inherently, or via an obviousness combination, and may also be relied upon to show the state of the art in the relevant timeframes.

In addition to the references listed in this section, Defendants also identify all of the exemplary prior art references listed above as relevant to the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art. Defendants reserve the right to supplement the Invalidity Contentions with additional charts for any of the references identified in Exhibits 592.A-F. Defendants further reserve the right to rely on the additional references, teachings, knowledge, or understandings identified or disclosed during fact or expert discovery in this case as evidence of the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art.

Defendants further incorporate by reference the prior art references related to the '592 Patent, including those identified in any other proceeding involving the '592 Patent or related U.S. or foreign patents. Defendants additionally incorporate by reference all prior art produced by or otherwise known by Giken, the named inventors, any past or current owner of the '592 Patent, or any individual substantively involved in the prosecution of the '592 Patent.

To the extent Giken argues that any limitation of the asserted claims of the '592 Patent are not explicitly or inherently disclosed by an item of prior art identified above or in Exhibits 592.A-F, any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge of those skilled in the art. The item of prior art would, therefore,

render the relevant claims invalid as obvious under 35 U.S.C. § 103.

5. Illustrative Obviousness Combinations and Motivations to Combine or Modify References.

Defendants have provided illustrative examples of such invalidating combinations in the attached charts. To the extent any reference disclosed does not chart every aspect of an element, the references still render the Asserted Claims obvious because one of ordinary skill in the art would find that aspect obvious without the need to combine or modify such aspect of the element with, or in light of, other references.

Generally, motivation to combine any of the references for the '592 Patent with other references exists within the references themselves, as well as within the knowledge of those of ordinary skill in the art at the relevant time. One of ordinary skill in the art would have understood how to combine or modify the teachings of the prior art references referred to in these Initial Invalidity Contentions and would have been motivated to pursue such combinations for numerous reasons. For example, all references identified above and in Exhibits 592.A-F are analogous art because each of them is from the same field of endeavor as the claimed inventions of the '592 Patent. *See, e.g.*, '592 Patent, Abstract. One of ordinary skill in the art would have combined particular features of systems, apparatuses, and methods disclosed in certain of the prior art references with other prior art references that do not expressly disclose such particular features because, *e.g.*, (i) the teachings of the references are interrelated and cite each other, (ii) it would have been a simple substitution of particular features in one reference into the systems, methods, and/or processes of another reference, (iii) the nature of the problem alleged by the Asserted Patents made such combinations apparent and a matter of common sense, (iv) design incentives and other market forces would have made the advantages of such combinations clear, (v) such combinations would have been predictable variations of the prior art, (vi) such

combinations would have yielded predictable results, (vii) it would have been obvious to try such combinations, and (viii) such combinations would be within a finite number of identified, predictable solutions to the problem alleged by the Asserted Patents.

Should additional evidence of motivation to combine or modify be required to render the Asserted Claims obvious, Defendants allege that there was a motivation to combine or modify one or more references listed above and identified in Exhibits 592.A-F, including the references in the '592 Patent Invalidity Charts, and, specifically, the illustrative obviousness combinations identified above. That motivation was provided in the nature of the problem allegedly solved by the '592 Patent, the teachings of the cited prior art itself, and/or the knowledge of a person of ordinary skill in the art. For example, one or more combinations of the prior art references in Exhibits 592.A-F would have been obvious because these references would have been combined or modified using: known methods to yield predictable results; common sense; known techniques in the same way; a simple substitution of one known, equivalent element for another to obtain predictable results; and/or teaching, suggestion, or motivation in the prior art generally. In addition, it would have been obvious to try combining or modifying the prior art references identified in Exhibits 592.A-F, including the references in the '592 Patent Invalidity Charts, because there were only a finite number of predictable solutions and/or because known work in one field of endeavor prompted variations based on predictable design incentives and/or market forces either in the same field or a different one. In addition, the combination of the prior art references would have been obvious because the combination represents known potential options with a reasonable expectation of success.

Additional evidence that there would have been a motivation to combine or modify the prior art references listed above and identified in Exhibits 592.A-F includes the interrelated

teachings of multiple prior art references; the effects of demands known to the design community or present in the marketplace; the existence of a known problem for which there was an obvious solution encompassed by the Asserted Claims; the existence of a known need or problem in the field of the endeavor at the time of the alleged invention(s); and the background knowledge, skill, or creativity that would have been possessed by a person having ordinary skill in the art.

Moreover, Exhibits 592.A-F identify limitations that were well known in the prior art, as well as limitation-specific motivation to combine or modify. Defendants may rely on uncited portions of the prior art references cited and produced, other publications and testimony, and the testimony of experts to establish that a person of ordinary skill in the art would have been motivated to modify or combine certain of the cited references so as to render the claims obvious. References identified by Defendants address the same technical issues and suggest very similar solutions to those issues discussed in the '592 Patent and generally known at the time of the alleged invention(s) claimed in the Asserted Claims.

C. Prior Art that Anticipates and/or Renders Obvious Each Asserted Claim of the '236 Patent.

Defendants contend that the prior art references identified in Exhibits 236.A-B and/or described below anticipate and/or render obvious, alone or in combination, one or more of the Asserted Claims of the '236 Patent. Each prior art reference identified below is prior art under at least 35 U.S.C. § 102(a), (b), and/or (e) (pre-AIA).

1. Prior Art Patents and Published Patent Applications

Prior Art Patents and Published Applications	Issue/Publication Date
U.S. Patent No. 7,143,428 (“Bruck”).	Nov. 28, 2006
U.S. Patent App. Pub. No. 2004/0231003 (“Cooper”).	Nov. 18 2004
U.S. Patent No. 8,611,258 (“Croak”).	Dec. 17, 2013

Prior Art Patents and Published Applications	Issue/Publication Date
U.S. Patent App. Pub. No. 2005/0262542 (“DeWeese”).	Nov. 24, 2005
U.S. Patent App. Pub. No. 2006/0258289 (“Dua”).	Nov. 16, 2006
U.S. Patent App. Pub. No. 2006/0221173 (“Duncan”).	Oct. 5, 2006
U.S. Patent App. Pub. No. 2006/0271959 (“Jacoby”).	Nov. 30, 2006
U.S. Patent No. 4,754,268 (“Mori”).	Jun. 28, 1988
U.S. Patent App. Pub. No. 2002/0078442 (“Reyes”).	Jun. 20, 2002
U.S. Patent App. Serial No. 09/475,391 (“Silva”).	Jun. 30, 2001
WIPO Patent App. No. WO 01/50753 (“Silva II”).	Jul. 12, 2001.
U.S. Patent App. Pub. No. 2007/0050822 (“Stevens”).	Mar. 1, 2007
U.S. Patent No 7,669,213 (“Wick”).	Feb. 23, 2010

2. Prior Art Products and Systems

Prior Art Products/Systems	Documentation	Date of Availability
TiVo Series2	See Exhibit 968.G	by 2003

In addition to the products in the chart above, Defendants continues to investigate the identities of the individuals or entities involved in the first sale, offer for sale, or public use of prior art products that were made using the system recited by the asserted claims of the ’236 Patent. Defendants will produce additional documents relating to the invalidity of the asserted claims by those products as they become available.

3. Claim Charts

Defendants have attached charts identifying prior art that anticipates and/or renders obvious each of the Asserted Claims of the ’236 Patent in **Exhibits 236.A-B**, collectively referred to as the “’236 Patent Invalidity Charts.”

For each Asserted Claim that is anticipated by a reference, the corresponding claim chart includes a citation to that reference for each limitation. While Defendants have identified at least one citation per limitation present in a reference, each and every disclosure of the same limitation in the same reference is not necessarily identified. In an effort to focus the issues, Defendants cite only portions of identified references, even where a reference may contain additional support for a particular claim element. Persons of ordinary skill in the art generally read a prior art reference as a whole and in the context of other publications and literature. Defendants reserve the right to rely on uncited portions of the prior art references and on other publications and expert testimony to provide context and as aids to understanding and interpreting the portions that are cited. To the extent any limitation is deemed not to be exactly met by an item of prior art, then any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge, skill, or creativity of those skilled in the art. Where Defendants cite to a particular figure in a prior art reference, the citation should be understood to encompass the caption and description of the figure and any text relating to the figure in addition to the figure itself. Conversely, where a cited portion of text refers to a figure, the citation should be understood to include the figure as well.

Defendants have provided exemplary combinations in Exhibits 236.A-B for specific claim limitations which identify exemplary secondary references and exemplary disclosures therefrom. Each prior art reference evidences teachings, suggestions, motivations, and/or other reasons to combine it with the other identified references in ways that render obvious all of the asserted claims of the '236 Patent. In addition to any specific combinations of prior art disclosed using claim charts, Defendants reserve the right to rely on any combination of prior art

references disclosed in these contentions.

To the extent any item of prior art cited above is deemed not to disclose, explicitly or inherently, any limitation of an asserted claim of the '236 Patent, Defendants reserve the right to argue that any difference between that prior art and the corresponding patent claim would have been either inherent in the art or obvious to a person of ordinary skill in the art, even if Defendants have not specifically denoted that the art is to be combined with the knowledge of a person of ordinary skill in the art.

4. The '236 Patent is Obvious Over the Prior Art.

In addition to the references cited on the face of the '236 Patent, the admitted prior art in the specification of the '236 Patent, and the prosecution history of the '236 Patent, the prior art references identified in Exhibits 236.A-B and listed above disclose the elements of the Asserted Claims, either explicitly, inherently, or via an obviousness combination, and may also be relied upon to show the state of the art in the relevant timeframes.

In addition to the references listed in this section, Defendants also identify all of the exemplary prior art references listed above as relevant to the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art. Defendants reserve the right to supplement the Invalidity Contentions with additional charts for any of the references identified in Exhibits 236.A-B. Defendants further reserve the right to rely on the additional references, teachings, knowledge, or understandings identified or disclosed during fact or expert discovery in this case as evidence of the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art.

Defendants further incorporate by reference the prior art references related to the '236 Patent, including those identified in any other proceeding involving the '236 Patent or related U.S. or foreign patents. Defendants additionally incorporate by reference all prior art produced

by or otherwise known by Giken, the named inventors, any past or current owner of the '236 Patent, or any individual substantively involved in the prosecution of the '236 Patent.

To the extent Giken argues that any limitation of the asserted claims of the '236 Patent are not explicitly or inherently disclosed by an item of prior art identified above or in Exhibits 236.A-B, any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge of those skilled in the art. The item of prior art would, therefore, render the relevant claims invalid as obvious under 35 U.S.C. § 103.

Moreover, Giken contends that one or more claims of the '236 patent read upon Amazon's "Watch Party" feature. If a fact finder were to accept this contention as true (which it is not), then the '236 patent's claims would be anticipated or rendered obvious by prior art references that disclose such functionality, including the prior art references and exemplary citations below.

- 1) U.S. Patent App. Pub. No. 2006/0271959 ("**Jacoby**"). *E.g.*, ¶¶ 52 ("shared viewing of content between a plurality of users, shared remote control functionality between a plurality of users, combinations thereof, shared remote and shared viewing with instant messaging between a plurality of users, etc."), 88 ("the synchronization of a given user with one or more buddies may result in the user and one or more buddies engaging in a "movie theater type viewing environment, wherein the user and one or more buddies view the same television show, movie, etc., at the same time while engaging in instant messaging or chat sessions"), Figs. 1, 5.
- 2) U.S. Patent App. Pub. No. 2006/0221173 ("**Duncan**"). *E.g.*, ¶¶ 3 ("allow the user to participate in a chat session which is related to the programme currently being viewed. Indeed, the chat room text can be displayed on the same television screen as the programme to which the chat relates"), 44 ("a user may participate in a service in which a group of users simultaneously view (or listen to) the same programmes and discuss them"), Fig. 4.
- 3) U.S. Patent App. Pub. No. 2004/0231003 ("**Cooper**"). *E.g.*, ¶¶ 55 ("Fig. 9 illustrates how a display can simultaneously present a television program and a chat room"), 56 ("when a user watching 'Gilligan's Island' selects the TV chat control, the server places the user in a 'Gilligan's Island' chat room 902 with other users viewing the show. The users can then share their comments on the show in real time by

- submitting messages to the server for display in the chat room window.”), 58 (“For example, if the user tunes from ‘Love Boat’ to ‘Fantasy Island,’ the user can be moved from the Love Boat chat room to the Fantasy Island chat room.”). Figs. 8-10.
- 4) U.S. Patent No. 8,611,258 (“**Croak**”). *E.g.*, Abstract (“Specifically, a user can request the network to activate and display a video session, such as a movie. The user can invite one or more other users to participate in the video session. As other users accept to participate in the video session, the network can activate another session that enables the participants to communicate with each other via instant messages.”), 8;14-16 (“Subscribers 331 and 332 can communicate via the established IM sessions using data flows 361 and 363 while watching the same streaming video contents.”), Figs. 3-4.
 - 5) U.S. Patent App. Pub. No. 2005/0262542 (“**DeWeese**”). *E.g.*, ¶¶ 93 (“Television program 202 may be displayed in region 203 of display screen 200, while a chat room region 206 may be displayed simultaneously in the lower portion of display screen 200.”), 94-96, 97 (“The divided nature of screen 200 allows users to simultaneously watch a television program and send real time communications to other users who are viewing the same program at the same time. In this way, chat room 206 is directly linked to the on-going actions in program 202 in that a user can send and receive comments about the content of the program as it unfolds on his television screen.”), 150 (“allows the user to participate in the chat group and to view the television program that is the subject of the chat simultaneously”), Figs. 9, 20-24, ¶ 139.
 - 6) U.S. Patent App. Pub. No. 2007/0050822 (“**Stevens**”). *E.g.*, Abstract (“transporting signals associated with common content to a group of subscribers such that each member of the group receives the same content and establishing the shared community experience between members of the group by providing communications between on or more members of the group during playback of the content”), ¶¶ 32 (“Any number of subscribers may create their own community groups and invite any number of other subscribers to join the group”), 36, 37 (“text messages from other members of the group are displayed in a pop-up window or other feature displayed in the televisions 40-46;” “[i]dentifiers and other features may be included to identify the users in the window and the text messages associated therewith, similar to an instant messaging arrangement”), 45 (“join a ‘TV-Together’ group;” “selected participants may tune (or are automatically tuned by the group leader) to a common television channel and are connected (preferably through the set-top box) in a multi-way audio conference call.”), 46, Figs. 1-2.
 - 7) U.S. Patent No. 7,143,428 (“**Bruck**”). *E.g.*, Abstract (“The system has a user-selectable chat option in which the viewer can enter text messages that will be displayed to other viewers of the video signal who have also selected the chat option.”), 7:44-46 (“Chat user interface 110 also includes a video region 118 for display of a video signal, i.e., a television program which the user was viewing prior to entry of the chat room.”), 8:4-6 (“In the interface of FIG. 8, chat region 108 is smaller and is positioned at the top of the interface, with video region 118 being located at the bottom.”), 7:17-11:14, Figs. 5-14.

To the extent Giken contends otherwise, the claims of the '236 patent recite, at most, a specific, narrow implementation of a well-known concept, which implementation is one of many possible implementations and which implementation Amazon does not practice.

5. Illustrative Obviousness Combinations and Motivations to Combine or Modify References

Defendants have provided illustrative examples of such invalidating combinations in the attached charts. To the extent any reference disclosed does not chart every aspect of an element, the references still render the Asserted Claims obvious because one of ordinary skill in the art would find that aspect obvious without the need to combine or modify such aspect of the element with, or in light of, other references.

Generally, motivation to combine any of the references for the '236 Patent with other references exists within the references themselves, as well as within the knowledge of those of ordinary skill in the art at the relevant time. One of ordinary skill in the art would have understood how to combine or modify the teachings of the prior art references referred to in these Initial Invalidity Contentions and would have been motivated to pursue such combinations for numerous reasons. For example, all references identified above and in Exhibits 236.A-B are analogous art because each of them is from the same field of endeavor as the claimed inventions of the '236 Patent. *See, e.g.*, '236 Patent, Abstract. One of ordinary skill in the art would have combined particular features of systems, apparatuses, and methods disclosed in certain of the prior art references with other prior art references that do not expressly disclose such particular features because, *e.g.*, (i) the teachings of the references are interrelated and cite each other, (ii) it would have been a simple substitution of particular features in one reference into the systems, methods, and/or processes of another reference, (iii) the nature of the problem alleged by the Asserted Patents made such combinations apparent and a matter of common sense, (iv) design

incentives and other market forces would have made the advantages of such combinations clear, (v) such combinations would have been predictable variations of the prior art, (vi) such combinations would have yielded predictable results, (vii) it would have been obvious to try such combinations, and (viii) such combinations would be within a finite number of identified, predictable solutions to the problem alleged by the Asserted Patents.

Should additional evidence of motivation to combine or modify be required to render the Asserted Claims obvious, Defendants allege that there was a motivation to combine or modify one or more references listed above and identified in Exhibits 236.A-B, including the references in the '236 Patent Invalidity Charts, and, specifically, the illustrative obviousness combinations identified above. That motivation was provided in the nature of the problem allegedly solved by the '236 Patent, the teachings of the cited prior art itself, and/or the knowledge of a person of ordinary skill in the art. For example, one or more combinations of the prior art references in Exhibits 236.A-B would have been obvious because these references would have been combined or modified using: known methods to yield predictable results; common sense; known techniques in the same way; a simple substitution of one known, equivalent element for another to obtain predictable results; and/or teaching, suggestion, or motivation in the prior art generally. In addition, it would have been obvious to try combining or modifying the prior art references identified in Exhibits 236.A-B, including the references in the '236 Patent Invalidity Charts, because there were only a finite number of predictable solutions and/or because known work in one field of endeavor prompted variations based on predictable design incentives and/or market forces either in the same field or a different one. In addition, the combination of the prior art references would have been obvious because the combination represents known potential options with a reasonable expectation of success.

Additional evidence that there would have been a motivation to combine or modify the prior art references listed above and identified in Exhibits 236.A-B includes the interrelated teachings of multiple prior art references; the effects of demands known to the design community or present in the marketplace; the existence of a known problem for which there was an obvious solution encompassed by the Asserted Claims; the existence of a known need or problem in the field of the endeavor at the time of the alleged invention(s); and the background knowledge, skill, or creativity that would have been possessed by a person having ordinary skill in the art.

Moreover, Exhibits 236.A-B identify limitations that were well known in the prior art, as well as limitation-specific motivation to combine or modify. Defendants may rely on uncited portions of the prior art references cited and produced, other publications and testimony, and the testimony of experts to establish that a person of ordinary skill in the art would have been motivated to modify or combine certain of the cited references so as to render the claims obvious. References identified by Defendants address the same technical issues and suggest very similar solutions to those issues discussed in the '236 Patent and generally known at the time of the alleged invention(s) claimed in the Asserted Claims.

D. Prior Art that Anticipates and/or Renders Obvious Each Asserted Claim of the '391 Patent.

Defendants contend that the prior art references identified in Exhibits 391.A-D and/or described below anticipate and/or render obvious, alone or in combination, one or more of the Asserted Claims of the '391 Patent. Each prior art reference identified below is prior art under at least 35 U.S.C. § 102(a), (b), and/or (e) (pre-AIA).

1. Prior Art Patents and Published Patent Applications

Prior Art Patents and Published Applications	Issue/Publication Date
Japanese Patent App. Pub. No. 2003158721 (“Hisamune”)	May 30, 2003
U.S. Patent App. Pub. No. 2006/0053049 (“Nolan”)	March 9, 2006
U.S. Patent App. Pub. No. 2007/0288951 (“Ray”)	December 13, 2007

2. Prior Art Products and Systems

Prior Art Products/Systems	Documentation	Date of Availability
Massive, Inc.	See Exhibit 391.D	2004
Lord of the Rings: Return of the King	See Exhibit 391.D	2003
SWAT 4	See Exhibit 391.D	2005

In addition to the products in the chart above, Defendants continues to investigate the identities of the individuals or entities involved in the first sale, offer for sale, or public use of prior art products that were made using the system recited by the asserted claims of the ’391 Patent. Defendants will produce additional documents relating to the invalidity of the asserted claims by those products as they become available.

3. Claim Charts

Defendants have attached charts identifying prior art that anticipates and/or renders obvious each of the Asserted Claims of the ’391 Patent in **Exhibits 391.A-D**, collectively referred to as the “’391 Patent Invalidation Charts.”

For each Asserted Claim that is anticipated by a reference, the corresponding claim chart includes a citation to that reference for each limitation. While Defendants have identified at least one citation per limitation present in a reference, each and every disclosure of the same limitation

in the same reference is not necessarily identified. In an effort to focus the issues, Defendants cite only portions of identified references, even where a reference may contain additional support for a particular claim element. Persons of ordinary skill in the art generally read a prior art reference as a whole and in the context of other publications and literature. Defendants reserve the right to rely on uncited portions of the prior art references and on other publications and expert testimony to provide context and as aids to understanding and interpreting the portions that are cited. To the extent any limitation is deemed not to be exactly met by an item of prior art, then any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge, skill, or creativity of those skilled in the art. Where Defendants cite to a particular figure in a prior art reference, the citation should be understood to encompass the caption and description of the figure and any text relating to the figure in addition to the figure itself. Conversely, where a cited portion of text refers to a figure, the citation should be understood to include the figure as well.

Defendants have provided exemplary combinations in Exhibits 391.A-D for specific claim limitations which identify exemplary secondary references and exemplary disclosures therefrom. Each prior art reference evidences teachings, suggestions, motivations, and/or other reasons to combine it with the other identified references in ways that render obvious all of the asserted claims of the '391 Patent. In addition to any specific combinations of prior art disclosed using claim charts, Defendants reserve the right to rely on any combination of prior art references disclosed in these contentions.

To the extent any item of prior art cited above is deemed not to disclose, explicitly or inherently, any limitation of an asserted claim of the '391 Patent, Defendants reserve the right to

argue that any difference between that prior art and the corresponding patent claim would have been either inherent in the art or obvious to a person of ordinary skill in the art, even if Defendants have not specifically denoted that the art is to be combined with the knowledge of a person of ordinary skill in the art.

4. The '391 Patent is Obvious Over the Prior Art.

In addition to the references cited on the face of the '391 Patent, the admitted prior art in the specification of the '391 Patent, and the prosecution history of the '391 Patent, the prior art references identified in Exhibits 391.A-D and listed above disclose the elements of the Asserted Claims, either explicitly, inherently, or via an obviousness combination, and may also be relied upon to show the state of the art in the relevant timeframes.

In addition to the references listed in this section, Defendants also identify all of the exemplary prior art references listed above as relevant to the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art. Defendants reserve the right to supplement the Invalidity Contentions with additional charts for any of the references identified in Exhibits 391.A-D. Defendants further reserve the right to rely on the additional references, teachings, knowledge, or understandings identified or disclosed during fact or expert discovery in this case as evidence of the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art.

Defendants further incorporate by reference the prior art references related to the '391 Patent, including those identified in any other proceeding involving the '391 Patent or related U.S. or foreign patents. Defendants additionally incorporate by reference all prior art produced by or otherwise known by Giken, the named inventors, any past or current owner of the '391 Patent, or any individual substantively involved in the prosecution of the '391 Patent.

To the extent Giken argues that any limitation of the asserted claims of the '391 Patent

are not explicitly or inherently disclosed by an item of prior art identified above or in Exhibits 391.A-D, any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge of those skilled in the art. The item of prior art would, therefore, render the relevant claims invalid as obvious under 35 U.S.C. § 103.

5. Illustrative Obviousness Combinations and Motivations to Combine or Modify References.

Defendants have provided illustrative examples of such invalidating combinations in the attached charts. To the extent any reference disclosed does not chart every aspect of an element, the references still render the Asserted Claims obvious because one of ordinary skill in the art would find that aspect obvious without the need to combine or modify such aspect of the element with, or in light of, other references.

Generally, motivation to combine any of the references for the '391 Patent with other references exists within the references themselves, as well as within the knowledge of those of ordinary skill in the art at the relevant time. One of ordinary skill in the art would have understood how to combine or modify the teachings of the prior art references referred to in these Initial Invalidity Contentions and would have been motivated to pursue such combinations for numerous reasons. For example, all references identified above and in Exhibits 391.A-D are analogous art because each of them is from the same field of endeavor as the claimed inventions of the '391 Patent. *See, e.g.*, '391 Patent, Abstract. One of ordinary skill in the art would have combined particular features of systems, apparatuses, and methods disclosed in certain of the prior art references with other prior art references that do not expressly disclose such particular features because, *e.g.*, (i) the teachings of the references are interrelated and cite each other, (ii) it would have been a simple substitution of particular features in one reference into the systems,

methods, and/or processes of another reference, (iii) the nature of the problem alleged by the Asserted Patents made such combinations apparent and a matter of common sense, (iv) design incentives and other market forces would have made the advantages of such combinations clear, (v) such combinations would have been predictable variations of the prior art, (vi) such combinations would have yielded predictable results, (vii) it would have been obvious to try such combinations, and (viii) such combinations would be within a finite number of identified, predictable solutions to the problem alleged by the Asserted Patents.

Should additional evidence of motivation to combine or modify be required to render the Asserted Claims obvious, Defendants allege that there was a motivation to combine or modify one or more references listed above and identified in Exhibits 391.A-D, including the references in the '391 Patent Invalidity Charts, and, specifically, the illustrative obviousness combinations identified above. That motivation was provided in the nature of the problem allegedly solved by the '391 Patent, the teachings of the cited prior art itself, and/or the knowledge of a person of ordinary skill in the art. For example, one or more combinations of the prior art references in Exhibits 391.A-D would have been obvious because these references would have been combined or modified using: known methods to yield predictable results; common sense; known techniques in the same way; a simple substitution of one known, equivalent element for another to obtain predictable results; and/or teaching, suggestion, or motivation in the prior art generally. In addition, it would have been obvious to try combining or modifying the prior art references identified in Exhibits 391.A-D, including the references in the '391 Patent Invalidity Charts, because there were only a finite number of predictable solutions and/or because known work in one field of endeavor prompted variations based on predictable design incentives and/or market forces either in the same field or a different one. In addition, the combination of the prior art

references would have been obvious because the combination represents known potential options with a reasonable expectation of success.

Additional evidence that there would have been a motivation to combine or modify the prior art references listed above and identified in Exhibits 391.A-D includes the interrelated teachings of multiple prior art references; the effects of demands known to the design community or present in the marketplace; the existence of a known problem for which there was an obvious solution encompassed by the Asserted Claims; the existence of a known need or problem in the field of the endeavor at the time of the alleged invention(s); and the background knowledge, skill, or creativity that would have been possessed by a person having ordinary skill in the art.

Moreover, Exhibits 391.A-D identify limitations that were well known in the prior art, as well as limitation-specific motivation to combine or modify. Defendants may rely on uncited portions of the prior art references cited and produced, other publications and testimony, and the testimony of experts to establish that a person of ordinary skill in the art would have been motivated to modify or combine certain of the cited references so as to render the claims obvious. References identified by Defendants address the same technical issues and suggest very similar solutions to those issues discussed in the '391 Patent and generally known at the time of the alleged invention(s) claimed in the Asserted Claims.

E. Prior Art that Anticipates and/or Renders Obvious Each Asserted Claim of the '615 Patent.

Defendants contend that the prior art references identified in Exhibits 615.A-B and/or described below anticipate and/or render obvious, alone or in combination, one or more of the Asserted Claims of the '615 Patent. Each prior art reference identified below is prior art under at least 35 U.S.C. § 102(a), (b), and/or (e) (pre-AIA).

1. Prior Art Patents and Published Patent Applications

Prior Art Patents and Published Applications	Issue/Publication Date
U.S. Patent No. 7,143,428 (“Bruck”).	Nov. 28, 2006
U.S. Patent App. Pub. No. 2004/0231003 (“Cooper”).	Nov. 18 2004
U.S. Patent No. 8,611,258 (“Croak”).	Dec. 17, 2013
U.S. Patent App. Pub. No. 2005/0262542 (“DeWeese”).	Nov. 24, 2005
U.S. Patent App. Pub. No. 2006/0221173 (“Duncan”).	Oct. 5, 2006
U.S. Provisional Patent App. Ser. No. 60/138,868 (“Herrington”).	Nov. 24, 2005
U.S. Patent App. Pub. No. 2005/0130613 (“Kutsuna”).	Jun. 16, 2005
U.S. Patent App. Pub. No. 2006/0271959 (“Jacoby”).	Nov. 30, 2006
U.S. Patent No. 4,754,268 (“Mori”).	Jun. 28, 1988
U.S. Patent App. Pub. No. 2001/0055951 (“Slotznick”).	Dec. 27, 2001
U.S. Patent App. Pub. No. 2007/0050822 (“Stevens”).	Mar. 1, 2007
U.S. Patent App. Pub. No. 2005/0160465 (“Walker”).	Jul. 21, 2005

2. Prior Art Products and Systems

Prior Art Products/Systems	Documentation	Date of Availability
TiVo Series2	See Exhibit 968.G	by 2003.

In addition to the products in the chart above, Defendants continues to investigate the identities of the individuals or entities involved in the first sale, offer for sale, or public use of prior art products that were made using the system recited by the asserted claims of the ’615 Patent. Defendants will produce additional documents relating to the invalidity of the asserted claims by those products as they become available.

3. Claim Charts

Defendants have attached charts identifying prior art that anticipates and/or renders obvious each of the Asserted Claims of the '615 Patent in **Exhibits 615.A-B**, collectively referred to as the "'615 Patent Invalidity Charts."

For each Asserted Claim that is anticipated by a reference, the corresponding claim chart includes a citation to that reference for each limitation. While Defendants have identified at least one citation per limitation present in a reference, each and every disclosure of the same limitation in the same reference is not necessarily identified. In an effort to focus the issues, Defendants cite only portions of identified references, even where a reference may contain additional support for a particular claim element. Persons of ordinary skill in the art generally read a prior art reference as a whole and in the context of other publications and literature. Defendants reserve the right to rely on uncited portions of the prior art references and on other publications and expert testimony to provide context and as aids to understanding and interpreting the portions that are cited. To the extent any limitation is deemed not to be exactly met by an item of prior art, then any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge, skill, or creativity of those skilled in the art. Where Defendants cite to a particular figure in a prior art reference, the citation should be understood to encompass the caption and description of the figure and any text relating to the figure in addition to the figure itself. Conversely, where a cited portion of text refers to a figure, the citation should be understood to include the figure as well.

Defendants have provided exemplary combinations in Exhibits 615.A-B for specific claim limitations which identify exemplary secondary references and exemplary disclosures therefrom. Each prior art reference evidences teachings, suggestions, motivations, and/or other

reasons to combine it with the other identified references in ways that render obvious all of the asserted claims of the '615 Patent. In addition to any specific combinations of prior art disclosed using claim charts, Defendants reserve the right to rely on any combination of prior art references disclosed in these contentions.

To the extent any item of prior art cited above is deemed not to disclose, explicitly or inherently, any limitation of an asserted claim of the '615 Patent, Defendants reserve the right to argue that any difference between that prior art and the corresponding patent claim would have been either inherent in the art or obvious to a person of ordinary skill in the art, even if Defendants have not specifically denoted that the art is to be combined with the knowledge of a person of ordinary skill in the art.

4. The '615 Patent is Obvious Over the Prior Art.

In addition to the references cited on the face of the '615 Patent, the admitted prior art in the specification of the '615 Patent, and the prosecution history of the '615 Patent, the prior art references identified in Exhibits 615.A-B and listed above disclose the elements of the Asserted Claims, either explicitly, inherently, or via an obviousness combination, and may also be relied upon to show the state of the art in the relevant timeframes.

In addition to the references listed in this section, Defendants also identify all of the exemplary prior art references listed above as relevant to the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art. Defendants reserve the right to supplement the Invalidity Contentions with additional charts for any of the references identified in Exhibits 615.A-B. Defendants further reserve the right to rely on the additional references, teachings, knowledge, or understandings identified or disclosed during fact or expert discovery in this case as evidence of the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art.

Defendants further incorporate by reference the prior art references related to the '615 Patent, including those identified in any other proceeding involving the '615 Patent or related U.S. or foreign patents. Defendants additionally incorporate by reference all prior art produced by or otherwise known by Giken, the named inventors, any past or current owner of the '615 Patent, or any individual substantively involved in the prosecution of the '615 Patent.

To the extent Giken argues that any limitation of the asserted claims of the '615 Patent are not explicitly or inherently disclosed by an item of prior art identified above or in Exhibits 615.A-B, any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge of those skilled in the art. The item of prior art would, therefore, render the relevant claims invalid as obvious under 35 U.S.C. § 103.

Moreover, Giken contends that one or more claims of the '615 patent read upon Amazon's "Watch Party" feature. If a fact finder were to accept this contention as true (which it is not), then the '615 patent's claims would be anticipated or rendered obvious by prior art references that disclose such functionality, including the prior art references and exemplary citations below.

- 1) U.S. Patent App. Pub. No. 2006/0271959 ("**Jacoby**"). *E.g.*, ¶¶ 52 ("shared viewing of content between a plurality of users, shared remote control functionality between a plurality of users, combinations thereof, shared remote and shared viewing with instant messaging between a plurality of users, etc."), 88 ("the synchronization of a given user with one or more buddies may result in the user and one or more buddies engaging in a "movie theater type viewing environment, wherein the user and one or more buddies view the same television show, movie, etc., at the same time while engaging in instant messaging or chat sessions"), Figs. 1, 5.
- 2) U.S. Patent App. Pub. No. 2006/0221173 ("**Duncan**"). *E.g.*, ¶¶ 3 ("allow the user to participate in a chat session which is related to the programme currently being viewed. Indeed, the chat room text can be displayed on the same television screen as the programme to which the chat relates"), 44 ("a user may participate in a service in which a group of users simultaneously view (or listen to) the same programmes and discuss them"), Fig. 4.

- 3) U.S. Patent App. Pub. No. 2004/0231003 (“**Cooper**”). *E.g.*, ¶¶ 55 (“Fig. 9 illustrates how a display can simultaneously present a television program and a chat room”), 56 (“when a user watching ‘Gilligan’s Island’ selects the TV chat control, the server places the user in a ‘Gilligan’s Island’ chat room 902 with other users viewing the show. The users can then share their comments on the show in real time by submitting messages to the server for display in the chat room window.”), 58 (“For example, if the user tunes from ‘Love Boat’ to ‘Fantasy Island,’ the user can be moved from the Love Boat chat room to the Fantasy Island chat room.”). Figs. 8-10.
- 4) U.S. Patent No. 8,611,258 (“**Croak**”). *E.g.*, Abstract (“Specifically, a user can request the network to activate and display a video session, such as a movie. The user can invite one or more other users to participate in the video session. As other users accept to participate in the video session, the network can activate another session that enables the participants to communicate with each other via instant messages.”), 8;14-16 (“Subscribers 331 and 332 can communicate via the established IM sessions using data flows 361 and 363 while watching the same streaming video contents.”), Figs. 3-4.
- 5) U.S. Patent App. Pub. No. 2005/0262542 (“**DeWeese**”). *E.g.*, ¶¶ 93 (“Television program 202 may be displayed in region 203 of display screen 200, while a chat room region 206 may be displayed simultaneously in the lower portion of display screen 200.”), 94-96, 97 (“The divided nature of screen 200 allows users to simultaneously watch a television program and send real time communications to other users who are viewing the same program at the same time. In this way, chat room 206 is directly linked to the on-going actions in program 202 in that a user can send and receive comments about the content of the program as it unfolds on his television screen.”), 150 (“allows the user to participate in the chat group and to view the television program that is the subject of the chat simultaneously”), Figs. 9, 20-24, ¶ 139.
- 6) U.S. Patent App. Pub. No. 2007/0050822 (“**Stevens**”). *E.g.*, Abstract (“transporting signals associated with common content to a group of subscribers such that each member of the group receives the same content and establishing the shared community experience between members of the group by providing communications between on or more members of the group during playback of the content”), ¶¶ 32 (“Any number of subscribers may create their own community groups and invite any number of other subscribers to join the group”), 36, 37 (“text messages from other members of the group are displayed in a pop-up window or other feature displayed in the televisions 40-46;” “[i]dentifiers and other features may be included to identify the users in the window and the text messages associated therewith, similar to an instant messaging arrangement”), 45 (“join a ‘TV-Together’ group;” “selected participants may tune (or are automatically tuned by the group leader) to a common television channel and are connected (preferably through the set-top box) in a multi-way audio conference call.”), 46, Figs. 1-2.
- 7) U.S. Patent No. 7,143,428 (“**Bruck**”). *E.g.*, Abstract (“The system has a user-selectable chat option in which the viewer can enter text messages that will be

displayed to other viewers of the video signal who have also selected the chat option.”), 7:44-46 (“Chat user interface 110 also includes a video region 118 for display of a video signal, i.e., a television program which the user was viewing prior to entry of the chat room.”), 8:4-6 (“In the interface of FIG. 8, chat region 108 is smaller and is positioned at the top of the interface, with video region 118 being located at the bottom.”), 7:17-11:14, Figs. 5-14.

To the extent Giken contends otherwise, the claims of the ’615 patent recite, at most, a specific, narrow implementation of a well-known concept, which implementation is one of many possible implementations and which implementation Amazon does not practice.

5. Illustrative Obviousness Combinations and Motivations to Combine or Modify References.

Defendants have provided illustrative examples of such invalidating combinations in the attached charts. To the extent any reference disclosed does not chart every aspect of an element, the references still render the Asserted Claims obvious because one of ordinary skill in the art would find that aspect obvious without the need to combine or modify such aspect of the element with, or in light of, other references.

Generally, motivation to combine any of the references for the ’615 Patent with other references exists within the references themselves, as well as within the knowledge of those of ordinary skill in the art at the relevant time. One of ordinary skill in the art would have understood how to combine or modify the teachings of the prior art references referred to in these Initial Invalidity Contentions and would have been motivated to pursue such combinations for numerous reasons. For example, all references identified above and in Exhibits 615.A-B are analogous art because each of them is from the same field of endeavor as the claimed inventions of the ’615 Patent. *See, e.g.*, ’615 Patent, Abstract. One of ordinary skill in the art would have combined particular features of systems, apparatuses, and methods disclosed in certain of the prior art references with other prior art references that do not expressly disclose such particular features because, *e.g.*, (i) the teachings of the references are interrelated and cite each other, (ii) it

would have been a simple substitution of particular features in one reference into the systems, methods, and/or processes of another reference, (iii) the nature of the problem alleged by the Asserted Patents made such combinations apparent and a matter of common sense, (iv) design incentives and other market forces would have made the advantages of such combinations clear, (v) such combinations would have been predictable variations of the prior art, (vi) such combinations would have yielded predictable results, (vii) it would have been obvious to try such combinations, and (viii) such combinations would be within a finite number of identified, predictable solutions to the problem alleged by the Asserted Patents.

Should additional evidence of motivation to combine or modify be required to render the Asserted Claims obvious, Defendants allege that there was a motivation to combine or modify one or more references listed above and identified in Exhibits 615.A-B, including the references in the '615 Patent Invalidity Charts, and, specifically, the illustrative obviousness combinations identified above. That motivation was provided in the nature of the problem allegedly solved by the '615 Patent, the teachings of the cited prior art itself, and/or the knowledge of a person of ordinary skill in the art. For example, one or more combinations of the prior art references in Exhibits 615.A-B would have been obvious because these references would have been combined or modified using: known methods to yield predictable results; common sense; known techniques in the same way; a simple substitution of one known, equivalent element for another to obtain predictable results; and/or teaching, suggestion, or motivation in the prior art generally. In addition, it would have been obvious to try combining or modifying the prior art references identified in Exhibits 615.A-B, including the references in the '615 Patent Invalidity Charts, because there were only a finite number of predictable solutions and/or because known work in one field of endeavor prompted variations based on predictable design incentives and/or market

forces either in the same field or a different one. In addition, the combination of the prior art references would have been obvious because the combination represents known potential options with a reasonable expectation of success.

Additional evidence that there would have been a motivation to combine or modify the prior art references listed above and identified in Exhibits 615.A-B includes the interrelated teachings of multiple prior art references; the effects of demands known to the design community or present in the marketplace; the existence of a known problem for which there was an obvious solution encompassed by the Asserted Claims; the existence of a known need or problem in the field of the endeavor at the time of the alleged invention(s); and the background knowledge, skill, or creativity that would have been possessed by a person having ordinary skill in the art.

Moreover, Exhibits 615.A-B identify limitations that were well known in the prior art, as well as limitation-specific motivation to combine or modify. Defendants may rely on uncited portions of the prior art references cited and produced, other publications and testimony, and the testimony of experts to establish that a person of ordinary skill in the art would have been motivated to modify or combine certain of the cited references so as to render the claims obvious. References identified by Defendants address the same technical issues and suggest very similar solutions to those issues discussed in the '615 Patent and generally known at the time of the alleged invention(s) claimed in the Asserted Claims.

F. Prior Art that Anticipates and/or Renders Obvious Each Asserted Claim of the '968 Patent.

Defendants contend that the prior art references identified in Exhibits 968.A-G and/or described below anticipate and/or render obvious, alone or in combination, one or more of the Asserted Claims of the '968 Patent. Each prior art reference identified below is prior art under at least 35 U.S.C. § 102(a), (b), and/or (e) (pre-AIA).

1. Prior Art Patents and Published Patent Applications

Prior Art Patents and Published Applications	Issue/Publication Date
U.S. Patent App. Pub. No. 2007/0157249 (“Cordray”).	Jul. 5, 2007
U.S. Patent App. Pub. No. 2008/0155615 (“Craner”).	Jun. 26, 2008
U.S. Patent No. 7,929,551 (“Dietrich”).	Apr. 19, 2011
U.S. Patent No. 8,365,235 (“Hunt”).	Jan. 29, 2013
U.S. Patent App. Pub. No. 2008/0025693 (“Lee”).	Jan. 31, 2008
U.S. Patent App. Pub. No. 2005/0097623 (“Tecot”).	May 5, 2005
U.S. Pat. App. Pub. No. 2005/0160465 (“Walker”).	Jul. 21, 2005

2. Prior Art Products and Systems

Prior Art Products/Systems	Documentation	Date of Availability
Apple iPod	See Exhibit 968.F	by 2003
TiVo Series2	See Exhibit 968.G	by 2007

In addition to the products in the chart above, Defendants continues to investigate the identities of the individuals or entities involved in the first sale, offer for sale, or public use of prior art products that were made using the system recited by the asserted claims of the '968 Patent. Defendants will produce additional documents relating to the invalidity of the asserted claims by those products as they become available.

3. Claim Charts

Defendants have attached charts identifying prior art that anticipates and/or renders obvious each of the Asserted Claims of the '968 Patent in **Exhibits 968.A-G**, collectively referred to as the “'968 Patent Invalidity Charts.”

For each Asserted Claim that is anticipated by a reference, the corresponding claim chart

includes a citation to that reference for each limitation. While Defendants have identified at least one citation per limitation present in a reference, each and every disclosure of the same limitation in the same reference is not necessarily identified. In an effort to focus the issues, Defendants cite only portions of identified references, even where a reference may contain additional support for a particular claim element. Persons of ordinary skill in the art generally read a prior art reference as a whole and in the context of other publications and literature. Defendants reserve the right to rely on uncited portions of the prior art references and on other publications and expert testimony to provide context and as aids to understanding and interpreting the portions that are cited. To the extent any limitation is deemed not to be exactly met by an item of prior art, then any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge, skill, or creativity of those skilled in the art. Where Defendants cite to a particular figure in a prior art reference, the citation should be understood to encompass the caption and description of the figure and any text relating to the figure in addition to the figure itself. Conversely, where a cited portion of text refers to a figure, the citation should be understood to include the figure as well.

Defendants have provided exemplary combinations in Exhibits 968.A-G for specific claim limitations which identify exemplary secondary references and exemplary disclosures therefrom. Each prior art reference evidences teachings, suggestions, motivations, and/or other reasons to combine it with the other identified references in ways that render obvious all of the asserted claims of the '968 Patent. In addition to any specific combinations of prior art disclosed using claim charts, Defendants reserve the right to rely on any combination of prior art references disclosed in these contentions.

To the extent any item of prior art cited above is deemed not to disclose, explicitly or inherently, any limitation of an asserted claim of the '968 Patent, Defendants reserve the right to argue that any difference between that prior art and the corresponding patent claim would have been either inherent in the art or obvious to a person of ordinary skill in the art, even if Defendants have not specifically denoted that the art is to be combined with the knowledge of a person of ordinary skill in the art.

4. The '968 Patent is Obvious Over the Prior Art.

In addition to the references cited on the face of the '968 Patent, the admitted prior art in the specification of the '968 Patent, and the prosecution history of the '968 Patent, the prior art references identified in Exhibits 968.A-G and listed above disclose the elements of the Asserted Claims, either explicitly, inherently, or via an obviousness combination, and may also be relied upon to show the state of the art in the relevant timeframes.

In addition to the references listed in this section, Defendants also identify all of the exemplary prior art references listed above as relevant to the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art. Defendants reserve the right to supplement the Invalidity Contentions with additional charts for any of the references identified in Exhibits 968.A-G. Defendants further reserve the right to rely on the additional references, teachings, knowledge, or understandings identified or disclosed during fact or expert discovery in this case as evidence of the knowledge, understandings, creativity, or skill of the person having ordinary skill in the art.

Defendants further incorporate by reference the prior art references related to the '968 Patent, including those identified in any other proceeding involving the '968 Patent or related U.S. or foreign patents. Defendants additionally incorporate by reference all prior art produced by or otherwise known by Giken, the named inventors, any past or current owner of the '968

Patent, or any individual substantively involved in the prosecution of the '968 Patent.

To the extent Giken argues that any limitation of the asserted claims of the '968 Patent are not explicitly or inherently disclosed by an item of prior art identified above or in Exhibits 968.A-G, any purported differences are such that the claimed subject matter as a whole would have been obvious to one skilled in the art at the time of the alleged invention, in view of the state of the art and knowledge of those skilled in the art. The item of prior art would, therefore, render the relevant claims invalid as obvious under 35 U.S.C. § 103.

5. Illustrative Obviousness Combinations and Motivations to Combine or Modify References.

Defendants have provided illustrative examples of such invalidating combinations in the attached charts. To the extent any reference disclosed does not chart every aspect of an element, the references still render the Asserted Claims obvious because one of ordinary skill in the art would find that aspect obvious without the need to combine or modify such aspect of the element with, or in light of, other references.

Generally, motivation to combine any of the references for the '968 Patent with other references exists within the references themselves, as well as within the knowledge of those of ordinary skill in the art at the relevant time. One of ordinary skill in the art would have understood how to combine or modify the teachings of the prior art references referred to in these Initial Invalidity Contentions and would have been motivated to pursue such combinations for numerous reasons. For example, all references identified above and in Exhibits 968.A-G are analogous art because each of them is from the same field of endeavor as the claimed inventions of the '968 Patent. *See, e.g.*, '968 Patent, Abstract. One of ordinary skill in the art would have combined particular features of systems, apparatuses, and methods disclosed in certain of the prior art references with other prior art references that do not expressly disclose such particular

features because, *e.g.*, (i) the teachings of the references are interrelated and cite each other, (ii) it would have been a simple substitution of particular features in one reference into the systems, methods, and/or processes of another reference, (iii) the nature of the problem alleged by the Asserted Patents made such combinations apparent and a matter of common sense, (iv) design incentives and other market forces would have made the advantages of such combinations clear, (v) such combinations would have been predictable variations of the prior art, (vi) such combinations would have yielded predictable results, (vii) it would have been obvious to try such combinations, and (viii) such combinations would be within a finite number of identified, predictable solutions to the problem alleged by the Asserted Patents.

Should additional evidence of motivation to combine or modify be required to render the Asserted Claims obvious, Defendants allege that there was a motivation to combine or modify one or more references listed above and identified in Exhibits 968.A-G, including the references in the '968 Patent Invalidity Charts, and, specifically, the illustrative obviousness combinations identified above. That motivation was provided in the nature of the problem allegedly solved by the '968 Patent, the teachings of the cited prior art itself, and/or the knowledge of a person of ordinary skill in the art. For example, one or more combinations of the prior art references in Exhibits 968.A-G would have been obvious because these references would have been combined or modified using: known methods to yield predictable results; common sense; known techniques in the same way; a simple substitution of one known, equivalent element for another to obtain predictable results; and/or teaching, suggestion, or motivation in the prior art generally. In addition, it would have been obvious to try combining or modifying the prior art references identified in Exhibits 968.A-G, including the references in the '968 Patent Invalidity Charts, because there were only a finite number of predictable solutions and/or because known work in

one field of endeavor prompted variations based on predictable design incentives and/or market forces either in the same field or a different one. In addition, the combination of the prior art references would have been obvious because the combination represents known potential options with a reasonable expectation of success.

Additional evidence that there would have been a motivation to combine or modify the prior art references listed above and identified in Exhibits 968.A-G includes the interrelated teachings of multiple prior art references; the effects of demands known to the design community or present in the marketplace; the existence of a known problem for which there was an obvious solution encompassed by the Asserted Claims; the existence of a known need or problem in the field of the endeavor at the time of the alleged invention(s); and the background knowledge, skill, or creativity that would have been possessed by a person having ordinary skill in the art.

Moreover, Exhibits 968.A-G identify limitations that were well known in the prior art, as well as limitation-specific motivation to combine or modify. Defendants may rely on uncited portions of the prior art references cited and produced, other publications and testimony, and the testimony of experts to establish that a person of ordinary skill in the art would have been motivated to modify or combine certain of the cited references so as to render the claims obvious. References identified by Defendants address the same technical issues and suggest very similar solutions to those issues discussed in the '968 Patent and generally known at the time of the alleged invention(s) claimed in the Asserted Claims.

IV. INVALIDITY UNDER 35 U.S.C. § 112

A. Lack of Written Description and Enablement Under 35 U.S.C. § 112(a).

Section 112 requires that a patent “contain a written description of ... the manner and process of making and using [the invention] in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly

connected, to make and use the same.” 35 U.S.C. § 112(a). A patent is invalid if the written description does not “describe the invention sufficiently to convey to a person of skill in the art that the patentee had possession of the claimed invention at the time of the application, *i.e.*, that the patentee invented what is claimed.” *LizardTech, Inc. v. Earth Res. Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed. Cir. 2005); *Carnegie Mellon Univ. v. Hoffmann-La Roche Inc.*, 541 F.3d 1115, 1122 (Fed. Cir. 2008) (same). “[T]he test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010). “Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.” *Id.* The specification provides inadequate support where it “fail[s] to demonstrate that the patentee possessed the *full scope* of the invention recited in [the claim]” *LizardTech*, 424 F.3d at 1345 (emphasis added). “The level of detail required to satisfy the written description requirement depends, in large part, on the nature of the claims and the complexity of the technology. *Streck, Inc. v. Research & Diagnostic Sys., Inc.*, 665 F.3d 1269, 1285 (Fed. Cir. 2012). But a “mere wish or plan” for obtaining the alleged invention does not satisfy the written description requirement. *Novozymes A/S v. DuPont Nutrition Biosciences APS*, 723 F.3d 1336, 1344 (Fed. Cir. 2013). Put another way, “a description that merely renders the invention obvious does not satisfy the requirement.” *Ariad*, 598 F.3d at 1351. Instead, “all the limitations must appear in the specification.” *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997). Defendants contend that, at least under Giken’s actual and/or apparent application of the claims, the specifications of at least one or more of the Asserted Patents do not include a sufficient written description supporting the claims.

Section 112 likewise requires that the specification “enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the” alleged invention. 35 U.S.C. § 112(a). A claim is not enabled if, “at the effective filing date of the patent, one of ordinary skill in the art could not practice their full scope without undue experimentation.” *Wyeth and Cordis Corp. v. Abbott Labs.*, 720 F.3d 1380, 1384 (Fed. Cir. 2013). “This important doctrine prevents both inadequate disclosure of an invention and overbroad claiming that might otherwise attempt to cover more than was actually invented.” *MagSil Corp. v. Hitachi Global Storage Techs., Inc.*, 687 F.3d 1377, 1381 (Fed. Cir. 2012).

“Whether undue experimentation is needed is not a single, simple factual determination, but rather is a conclusion reached by weighing many factual considerations.” *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988). These factors may include: “(1) the quantity of experimentation necessary, (2) the amount of direction or guidance presented, (3) the presence or absence of working examples, (4) the nature of the invention, (5) the state of the prior art, (6) the relative skill of those in the art, (7) the predictability or unpredictability of the art, and (8) the breadth of the claims.” *Id.* Although “a specification need not disclose what is well known in the art,” “[t]ossing out the mere germ of an idea does not constitute enabling disclosure.” *Genentech, Inc. v. Novo Nordisk A/S*, 108 F.3d 1361, 1366 (Fed. Cir. 1997). A patent “cannot simply rely on the knowledge of a person of ordinary skill to serve as a substitute for the missing information in the specification.” *ALZA Corp. v. Andrx Pharms., LLC*, 603 F.3d 935, 941 (Fed. Cir. 2010).

The specifications of the Asserted Patents fail to satisfy the written description requirement for the Asserted Claims because the alleged inventions claimed therein are not sufficiently described in the specifications of the Asserted Patents. Specifically, the Asserted Patents fail to satisfy the written description requirement for at least the terms identified below

because, based on those terms, the respective specifications of the Asserted Patents do not adequately convey to those skilled in the art that the inventors had possession of the claimed subject matter as of the respective filing dates. Moreover, each Asserted Claim fails to satisfy the written description requirement because the Asserted Patents' specifications do not set forth a single embodiment that includes all limitations of any Asserted Claim. These Invalidity Contentions are based on Defendants' understanding of Giken's interpretation of the Asserted Claims as asserted in the infringement contentions. Because compliance with the written description requirement of 35 U.S.C. § 112, first paragraph, depends on the construction of the Asserted Claims—and no claim construction positions have been exchanged, no claim construction order has issued and no expert discovery has taken place—Defendants' positions on written description are necessarily preliminary at this early stage of the case. Defendants reserve their right to amend or further revise these Invalidity Contentions based on further developments, including the Court's claim construction opinion, and discovery in the case. When a phrase is recited in multiple claims, the first instance of that phrase being recited is indicated below; invalidity under § 112, first paragraph, for lack of written description applies to any, all, and each of the claims where the phrase is recited, however.

The Asserted Patents also fail to satisfy the enablement requirement because the specifications of the Asserted Patents do not describe the manner and process of making and using the alleged inventions in the Asserted Claims so as to enable a person of skill in the art to make and use the full scope of the alleged inventions without undue experimentation. Specifically, the specifications of the Asserted Patents fail to meet the enablement requirement for at least the terms identified below because, based on those terms, the respective specifications of the Asserted Patents do not describe the manner and process of making and using the alleged

inventions in the Asserted Claims. These Invalidity Contentions are based on Defendants' understanding of Giken's interpretation of the Asserted Claims as asserted in the infringement contentions. Because compliance with the enablement requirement of 35 U.S.C. §112, first paragraph, depends on the construction of the Asserted Claims—and no claim construction positions have been exchanged, no claim construction order has been issued and no expert discovery has taken place—Defendants' positions on enablement are necessarily preliminary at this early stage of the case. Defendants reserve their right to amend or further revise these Invalidity Contentions based on further developments, including the Court's claim construction opinion, and discovery in the case. When a phrase is recited in multiple claims, the first instance of that phrase being recited is indicated below; invalidity under § 112, first paragraph for lack of enablement applies to any, all, and each of the claims where the phrase is recited, however.

For example:

1. The '592 Patent

The asserted claims of the '592 Patent, at least under Giken's actual and/or apparent application of the claims, are invalid under 35 U.S.C. § 112(a) because the specification lacks an adequate written description of the alleged invention and fails to enable the full scope of the alleged invention.

- “the I/O interface locating the integral program in accordance with information at the time of selection by the remote controller” ('592 patent, claims 1, 6);
- “[an/the] integral program” ('592 patent, claims 1, 2, 3, 5, 6, 7, 8, 10);
- “a television display that shows the digital moving image contents from the first provider and the second provider” ('592 patent, claim 1);
- “a TV set processor that has the television display show a past part of the integral program which has been already provided by the first provider and retrieved from the memory in the TV set computer” ('592 patent, claim 2);

- “a television display that shows the digital moving image contents provided in accordance with a program schedule table and the digital moving image content provided independently from the program schedule table;” (’592 patent, claim 6);
- “the memory in the TV set computer keeps information necessary for the TV set computer to locate the integral program same as the integral program provided in accordance with a program schedule table” (’592 patent, claim 10);
- “wherein the s remote controller selects the one of the digital moving image contents by means of selecting the sub provider;” (’592 patent, claim 11).

2. The ’236 Patent

The asserted claims of the ’236 patent, at least under Giken’s actual and/or apparent application of the claims, are invalid under 35 U.S.C. § 112(a) because the specification lacks an adequate written description of the alleged invention and fails to enable the full scope of the alleged invention.

- “the plurality of outside counterparts including a first type of counterpart under free selection and a second type of counterpart which is predetermined” (’236 patent, claim 1);
- “an input provided inside the television set and arranged to newly and freely prepare first information;” (’236 patent, claim 1);
- “an automatic generator provided inside the television set and arranged to generate predetermined second information in response to the detector which detects a cause of a predetermined change in the television function” (’236 patent, claim 1);
- “a second trigger provided inside the television set and arranged to automatically send the second information to the second type of counterpart through the same communicator in response to completion of the function of the automatic generator and the second designator” (’236 patent, claim 1).

3. The ’391 Patent

The asserted claims of the ’391 patent, at least under Giken’s actual and/or apparent application of the claims, are invalid under 35 U.S.C. § 112(a) because the specification lacks an adequate written description of the alleged invention and fails to enable the full scope of the alleged invention.

- “a first controller ” (’391 patent, claims 1, 10);
- “electric data” (’391 patent, claims 1, 10);
- “a second controller” (’391 patent, claims 1, 10);
- “wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message” (’391 patent, claims 1, 10);
- “the electric data having been issued to the moving image viewing apparatus, without intermediary of the moving image data delivery system, by the advertising image data delivery system in exchange of a commercial message view by the moving image viewing apparatus” (’391 patent, claim 1);
- “without intermediary of the moving image data delivery system” (’391 patent, claims 1, 10);
- “wherein the advertising image data delivery system is integrated into the moving image data delivery system” (’391 patent, claim 9);
- “first controller adapted to issue, without intermediary of the moving image data delivery system, to one of the moving image viewing apparatuses an electric data” (’391 patent, claim 10);
- “third controller” (’391 patent, claim 10);
- “a third controller adapted to allot the received electric payment to the moving image data delivery system” (’391 patent, claim 10);
- “fourth controller” (’391 patent, claims 12-14);
- “a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses by request thereof.” (’391 patent, claim 12);
- “the advertising image data of commercial message being related to a television program designated by the moving image viewing apparatus” (’391 patent, claim 13);
- “wherein the advertising image data delivery system is integrated into a system of the advertiser” (’391 patent, claim 15).

4. The ’615 Patent

The asserted claims of the ’615 patent, at least under Giken’s actual and/or apparent

application of the claims, are invalid under 35 U.S.C. § 112(a) because the specification lacks an adequate written description of the alleged invention and fails to enable the full scope of the alleged invention.

- “a receiver arranged to receive, without request or acknowledgement, information of one definite broadcast program which can be displayed on the display and is identified by the program selection of the another broadcast program viewing system” (’615 patent, claim 4);
- “a manual controller having a predetermined operating portion to change the display in response to a predetermined same manual operation from own motive of a viewer of the display on the basis of the information received by the receiver,” (’615 patent, claim 4);
- “the information including information of a broadcast program which is not currently not displayed on the display” (’615 patent, claims 4, 8);
- “the information being without request or acknowledgement from the another broadcast program viewing system” (’615 patent, claim 8);
- “in response to a same manual operation from own motive of a viewer,” (’615 patent, claim 8);
- “the same manual operation being universal regardless of the information and without any program selecting operation” (’615 patent, claim 4).

5. The ’968 Patent

The asserted claims of the ’968 patent, at least under Giken’s actual and/or apparent application of the claims, are invalid under 35 U.S.C. § 112(a) because the specification lacks an adequate written description of the alleged invention and fails to enable the full scope of the alleged invention.

- “A receiving apparatus configured to receive digital moving image contents from a provider of the digital moving image contents, the provider being commutatively connected to the receiving apparatus,” (’968 patent, claim 1);
- “wherein the processor is configured to designate an optional part of the digital moving image contents in response to the manual operation.” (’968 patent, claims 4, 12);
- “wherein the receiving method is further configured to designate an optional part

of the digital moving image contents in response to the manual operation” (’968 patent, claim 8);

- “A receiving system configured to receive digital moving image contents from a provider of the digital moving image contents, the provider being commutatively connected to the receiving system,” (’968 patent, claim 9).

B. Indefiniteness Under 35 U.S.C. § 112(b) and/or (f).

Under 35 U.S.C. § 112, a “patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014). “The primary purpose of the definiteness requirement is to ensure that the claims are written in such a way that they give notice to the public of the extent of the legal protection afforded by the patent, so that interested members of the public, *e.g.*, competitors of the patent owner, can determine whether or not they infringe.” *All Dental Prodx, LLC v. Advantage Dental Prods., Inc.*, 309 F.3d 774, 779-80 (Fed. Cir. 2002) (citing *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 28-29 (1997)). Put another way, “[a] patent holder should know what he owns, and the public should know what he does not.” *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 731 (2002).

The Asserted Claims are invalid as indefinite because they fail to inform those skilled in the art about the scope of the alleged invention with reasonable certainty. These Invalidity Contentions are based on Defendants’ understanding of Giken’s interpretation of the Asserted Claims as asserted in the infringement contentions. Because the determination of whether the claims are indefinite under 35 U.S.C. § 112, second paragraph, depends on the construction of the Asserted Claims—and no claim construction positions have been exchanged, no claim construction order has been issued and no expert discovery has taken place—Defendants’ positions on indefiniteness are necessarily preliminary at this early stage of the case. Defendants

reserve their right to amend or further revise these Invalidity Contentions based on further developments, including the Court’s claim construction opinion, and discovery in the case.

The Asserted Claims are also indefinite because the specifications of the Asserted Patents fail to disclose a specific structure for performing the functions recited in the Asserted Claims. These Invalidity Contentions are based on the Defendants’ understanding of Giken’s interpretation of the Asserted Claims as asserted in Giken’s infringement contentions. Because the determination of whether the claims are indefinite under 35 U.S.C. §§ 112, sixth paragraph and second paragraph, depends on the construction of the Asserted Claims—and no claim construction positions have been exchanged, no claim construction order has issued, and no expert discovery has taken place—Defendants’ positions on indefiniteness are necessarily preliminary at this early stage of the case. Defendants reserve their right to amend or further revise these Invalidity Contentions based on further developments, including the Court’s claim construction opinion, and discovery in the case.

When a phrase is recited in multiple claims, the first instance of that phrase being recited is indicated below; invalidity under § 112, second and sixth paragraphs, for indefiniteness applies to any, all, and each of claims where the phrase is recited, however.

1. The ’592 Patent

At least under Giken’s actual and/or apparent application of the claims, the asserted claims of the ’592 patent are invalid under 35 U.S.C. § 112(b) for indefiniteness because the specification and prosecution history of the ’592 patent would not inform those skilled in the art about the scope of the alleged invention with reasonable certainty. Further, the asserted claims of the ’592 patent are invalid for indefiniteness because the specification does not disclose adequate corresponding structure, material, or acts for several claim terms reciting functional language subject to 35 U.S.C. § 112(f).

- “remote controller” (’592 patent, claims 1, 6, 11);
- “the I/O interface” (’592 patent, claims 1, 6);
- “the I/O interface locating the integral program in accordance with information at the time of selection by the remote controller” (’592 patent, claims 1, 6);
- “[an/the] integral program” (’592 patent, claims 1, 2, 3, 5, 6, 7, 8, 10);
- “a TV set processor that has the television display show a past part of the integral program which has been already provided by the first provider and retrieved from the memory in the TV set computer” (’592 patent, claim 2);
- “a television display that shows the digital moving image contents provided in accordance with a program schedule table and the digital moving image content provided independently from the program schedule table;” (’592 patent, claim 6);

2. The ’236 Patent

At least under Giken’s actual and/or apparent application of the claims, the asserted claims of the ’236 patent are invalid under 35 U.S.C. § 112(b) for indefiniteness because the specification and prosecution history of the ’236 patent would not inform those skilled in the art about the scope of the alleged invention with reasonable certainty. Further, the asserted claims of the ’236 patent are invalid for indefiniteness because the specification does not disclose adequate corresponding structure, material, or acts for several claim terms reciting functional language subject to 35 U.S.C. § 112(f).

- “a television function unit provided inside the television set and arranged to relate to a television function;” (’236 patent, claim 1);
- “a detector provided inside the television set and arranged to detect a cause of change in the television function;” (’236 patent, claim 1);
- “a communicator provided inside the television set and arranged to selectively communicate with one of a plurality of outside counterparts by means of designating an address of one of the outside counterparts,” (’236 patent, claim 1);
- “the plurality of outside counterparts including a first type of counterpart under free selection and a second type of counterpart which is predetermined” (’236 patent, claim 1);

- “an input provided inside the television set and arranged to newly and freely prepare first information;” (’236 patent, claim 1);
- “an automatic generator provided inside the television set and arranged to generate predetermined second information in response to the detector which detects a cause of a predetermined change in the television function” (’236 patent, claim 1);
- “a second trigger provided inside the television set and arranged to automatically send the second information to the second type of counterpart through the same communicator in response to completion of the function of the automatic generator and the second designator” (’236 patent, claim 1);
- “wherein the second information includes a channel identification of broadcast program for indication on a display of the another television set to visually inform the another television set of channel selection in the television function.” (’236 patent, claim 15).

3. The ’391 Patent

At least under Giken’s actual and/or apparent application of the claims, the asserted claims of the ’391 patent are invalid under 35 U.S.C. § 112(b) for indefiniteness because the specification and prosecution history of the ’391 patent would not inform those skilled in the art about the scope of the alleged invention with reasonable certainty. Further, the asserted claims of the ’391 patent are invalid for indefiniteness because the specification does not disclose adequate corresponding structure, material, or acts for several claim terms reciting functional language subject to 35 U.S.C. § 112(f).

- “a first controller ” (’391 patent, claims 1, 10);
- “electric data” (’391 patent, claims 1, 10);
- “a second controller” (’391 patent, claims 1, 10);
- “wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message” (’391 patent, claims 1, 10);
- “the electric data having been issued to the moving image viewing apparatus, without intermediary of the moving image data delivery system, by the

advertising image data delivery system in exchange of a commercial message view by the moving image viewing apparatus” (’391 patent, claim 1);

- “a plurality of digital moving image data of television programs to be viewed by the moving image viewing apparatuses” (’391 patent, claim 1);
- “for allowing to display the television program in exchange of a presentation of an electric data denoting a right of viewing the television program” (’391 patent, claim 1);
- “without intermediary of the moving image data delivery system” (’391 patent, claims 1, 10);
- “in exchange of a commercial message view” (’391 patent, claim 1);
- “first controller adapted to issue, without intermediary of the moving image data delivery system, to one of the moving image viewing apparatuses an electric data” (’391 patent, claim 10);
- “third controller” (’391 patent, claim 10);
- “a third controller adapted to allot the received electric payment to the moving image data delivery system” (’391 patent, claim 10);
- “fourth controller” (’391 patent, claims 12-14);
- “a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses by request thereof.” (’391 patent, claim 12);

4. The ’615 Patent

At least under Giken’s actual and/or apparent application of the claims, the asserted claims of the ’615 patent are invalid under 35 U.S.C. § 112(b) for indefiniteness because the specification and prosecution history of the ’615 patent would not inform those skilled in the art about the scope of the alleged invention with reasonable certainty. Further, the asserted claims of the ’615 patent are invalid for indefiniteness because the specification does not disclose adequate corresponding structure, material, or acts for several claim terms reciting functional language subject to 35 U.S.C. § 112(f).

- “A broadcast program viewing system for viewing a broadcast program same as that identified by a program selection of another broadcast program viewing system in another place to share same experience of viewing same broadcast program” (’615 patent, claim 4);
- “a receiver arranged to receive, without request or acknowledgement, information of one definite broadcast program which can be displayed on the display and is identified by the program selection of the another broadcast program viewing system” (’615 patent, claim 4);
- “the information including information of a broadcast program which is not currently not displayed on the display” (’615 patent, claim 4);
- “a manual controller having a predetermined operating portion to change the display in response to a predetermined same manual operation from own motive of a viewer of the display on the basis of the information received by the receiver,” (’615 patent, claim 4);
- “the same manual operation being universal regardless of the information and without any program selecting operation” (’615 patent, claims 4, 8);
- “wherein the program selection of the another broadcast program viewing system is a code setting to download the selected broadcast program” (’615 patent, claim 6);
- “In a broadcast program viewing system for viewing a broadcast program same as that identified by a program selection of another broadcast program viewing system in another place in accordance with information of one definite broadcast program which can be viewed by the broadcast program viewing system and is identified by the program selection of the another broadcast program viewing system to share same experience of viewing same broadcast program” (’615 patent, claim 8);
- “the information being without request or acknowledgement from the another broadcast program viewing system” (’615 patent, claim 8);
- “in response to a same manual operation from own motive of a viewer,” (’615 patent, claim 8);
- “wherein the manual operating portions of the manual operating part include ten key” (’615 patent, claim 11).

5. The ’968 Patent

At least under Giken’s actual and/or apparent application of the claims, the asserted claims of the ’968 patent are invalid under 35 U.S.C. § 112(b) for indefiniteness because the

specification and prosecution history of the '968 patent would not inform those skilled in the art about the scope of the alleged invention with reasonable certainty. Further, the asserted claims of the '968 patent are invalid for indefiniteness because the specification does not disclose adequate corresponding structure, material, or acts for several claim terms reciting functional language subject to 35 U.S.C. § 112(f).

- “A receiving apparatus configured to receive digital moving image contents from a provider of the digital moving image contents, the provider being commutatively connected to the receiving apparatus,” ('968 patent, claim 1);
- “a designation software controller configured to control the memory to keep the information in response to a termination of viewing the viewed part and control the processor to automatically designate the succeeding part of the digital moving image contents when the viewing starts again” ('968 patent, claim 1);
- “a receiver of the designated succeeding part of the digital moving image contents in response to the designation by the processor” ('968 patent, claims 1, 9);
- “wherein the processor is configured to designate an optional part of the digital moving image contents in response to the manual operation.” ('968 patent, claims 4, 12);
- “wherein the receiving method is further configured to designate an optional part of the digital moving image contents in response to the manual operation” ('968 patent, claim 8);
- “A receiving system configured to receive digital moving image contents from a provider of the digital moving image contents, the provider being commutatively connected to the receiving system,” ('968 patent, claim 9).

V. PATENT ELIGIBILITY (35 U.S.C. § 101)

Claims directed to an abstract idea that do not add an inventive concept are ineligible for patent protection. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 69-70 (2012); *Bilski v. Kappos*, 561 U.S. 593, 601-02 (2010). Determining whether the subject matter of a claim is patent-ineligible is a two-step process. *Alice*, 134 S. Ct at 2355; *Mayo*, 566 U.S. at 69-70. First, the Court must “determine whether the claims at issue are directed to a patent-ineligible concept” such as an

abstract idea. *Alice*, 134 S. Ct. at 2355. Second, if the claims are directed to a patent-ineligible concept, the Court must “consider the elements of each claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent eligible application.” *Id.* (internal quotations omitted).

Several principles help guide the analysis of whether the claims are directed to an abstract idea. First, “the abstract idea exception does not turn solely on whether the claimed invention comprises physical versus mental steps.” *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1161 (Fed. Cir. 2018). “It is well-settled that mere recitation of concrete, tangible components is insufficient to confer patent eligibility to an otherwise abstract idea.” *In re TLI Commc’ns LLC Pat. Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016). Second, implementation of an abstract concept using conventional generic computer components is insufficient to transform an abstract idea into a patent-eligible invention. *Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App’x 1014, 1016 (Fed. Cir. 2017).

Defendants’ contention that the Asserted Claims are invalid under 35 U.S.C. § 101 are made in the alternative, and do not constitute, and should not be interpreted as, admissions that any of the asserted claims are not anticipated or rendered obvious by any prior art.

The Asserted Claims, including as they appear to be construed by Giken, are invalid because they do not constitute patentable subject matter under 35 U.S.C. § 101. *See, e.g., Alice*, 134 S.Ct. 2347; *Bilski*, 130 S. Ct. 3218; *Diamond v. Diehr*, 450 U.S. 17 (1981); *Gottschalk v. Benson*, 409 U.S. 63 (1972); *In re Nuijten*, 500 F.3d 1346 (Fed. Cir. 2007).

Defendants incorporate here by reference their motion to dismiss the ’968 Patent as unpatentable subject matter. (D.I. 13-14). Defendants also incorporate here by reference the bases of invalidity set forth in Apple Inc.’s motions to dismiss the ’968 Patent as unpatentable

subject matter (D.I. 11, 21) in *NL Giken Inc. v. Apple Inc.*, No. 1:24-cv-00013-MN (D. Del.).

The asserted claims of the '391 patent are invalid because they do not constitute patentable subject matter under 35 U.S.C. § 101. The asserted claims of the '391 patent are directed to an abstract idea—a system for offering video content in exchange for watching an advertisement and receiving payment from the sponsor of the advertisement. This abstract idea is similar to many found unpatentable by the Federal Circuit. *See, .e.g., Ultramercial Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (“The process of receiving copyrighted media, selecting an ad, offering the media in exchange for watching the selected ad, displaying the ad, allowing the consumer access to the media, and receiving payment from the sponsor of the ad all describe an abstract idea, devoid of a concrete or tangible application.”); *Smartflash LLC v. Apple Inc.*, 680 F. App’x 977, 984 (Fed. Cir. 2017) (holding ineligible “the abstract idea of conditioning and controlling access to data based on payment”).

That the claims are directed to systems comprised of various electronic components is not sufficient to confer eligibility. Indeed, the Federal Circuit has made clear that “after Alice, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal quotations and citations omitted). At least the following claim elements of the asserted claims of the '391 patent are merely directed to generic computer or similar electronic components (as shown in Defendants’ invalidity contentions involving anticipation and/or obviousness in this case):

- “moving image viewing apparatuses” which Giken alleges include “laptops, phones, or other viewing devices,” (Ex. C-1 at 6);
- “moving image data delivery system” which Giken alleges includes general

purpose computers and streaming software combined with various network servers (Ex. C-1 at 8);

- “storage” which Giken alleges may be RAM (Ex. C-1 at 9);
- “first controller” which Giken alleges may be a content delivery network server (Ex. C-1 at 11);
- “second controller” which Giken alleges to be a computer processor (Ex. C-1 at 17);
- “electric data” which Giken alleges to be a tracking pixel (Ex. C-1 at 14); and
- “advertising image data delivery system” which Giken inconsistently alleges at various times to be both the Amazon Ad server, *see, e.g.*, Ex C-1 at 17 and the “Twitch System,” *see, e.g.*, Ex. C-1 at 14.

This high-level, abstract idea of a system for offering video content in exchange for watching an advertisement and receiving payment from the sponsor of the advertisement fails to recite a non-abstract concept to confer eligibility.

Furthermore, under Alice Step 2 the asserted claims of the ’391 patent do not contain an inventive concept. The asserted claims employ well-understood, routine, and conventional concepts (as shown in Defendants’ invalidity contentions involving anticipation and/or obviousness in this case), which is not enough to impart patent eligibility of an abstract idea and as below. *See, e.g., Alice*, 134 S. Ct. at 2359 (holding that limitations describing “‘well-understood, routine, conventional activit[ies]’ previously known to the industry” were insufficient to supply an inventive concept (quoting *Mayo*, 132 S. Ct. at 1294)). At least the following claim elements are directed to well-understood, routine, and/or conventional concepts:

- Storing television programs for broadcast;

- Viewing television programs on, e.g., television sets;
- Advertisements playing during television viewing;
- Advertisers paying for advertisements to be played during television broadcasts;
- and
- Targeted advertising.

And as an ordered combination, nothing within the asserted claims of the '391 patent confer eligibility.

The asserted claims of the '592 patent are invalid because they do not constitute patentable subject matter under 35 U.S.C. § 101. The asserted claims of the '592 patent are directed to an abstract idea—receiving media content via two content providers via two separate communication mediums. This abstract idea is similar to many found unpatentable by the Federal Circuit. *See, .e.g., Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017) (“The claim requires the functional results of ‘converting,’ ‘routing,’ ‘controlling,’ ‘monitoring,’ and ‘accumulating records,’ but does not sufficiently describe how to achieve these results in a non-abstract way.”).

That the claims are directed to systems comprised of various electronic components is not sufficient to confer eligibility. Indeed, the Federal Circuit has made clear that “after Alice, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal quotations and citations omitted). At least the following claim elements of the asserted claims of the '592 patent are merely directed to generic computer or similar electronic components (as shown in Defendants' invalidity contentions involving anticipation and/or obviousness in this case):

- “remote controller”;
- “tuner”;
- “television display”;
- “memory”; and
- “TVset.”

This high-level, abstract idea of receiving media content via two content providers via two separate communication mediums fails to recite a non-abstract concept to confer eligibility.

Furthermore, under Alice Step 2 the asserted claims of the ’592 patent do not contain an inventive concept. The asserted claims employ well-understood, routine, and conventional concepts (as shown in Defendants’ invalidity contentions involving anticipation and/or obviousness in this case), which is not enough to impart patent eligibility of an abstract idea and as below. *See, e.g., Alice*, 134 S. Ct. at 2359 (holding that limitations describing “‘well-understood, routine, conventional activit[ies]’ previously known to the industry” were insufficient to supply an inventive concept (quoting *Mayo*, 132 S. Ct. at 1294)). At least the following claim elements are directed to well-understood, routine, and/or conventional concepts:

- Selecting a television channel;
- Over-the-air television program broadcasts;
- A television display that shows the content; and
- Memory that stores downloaded content.

And as an ordered combination, nothing within the asserted claims of the ’592 patent confer eligibility.

Defendants reserve the right to supplement these disclosures based on further investigation and discovery.

VI. PRIOR ART DOCUMENT PRODUCTION

Pursuant to Paragraph 6(d) of the Scheduling Order (Dkt. 32), Defendants have produced or made available for inspection known invalidating prior art references.

Dated: November 15, 2024

Respectfully submitted,

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Inc.*

CERTIFICATE OF SERVICE

I, Brian A. Biggs, hereby certify that on this 15th day of November, 2024, a copy of **DEFENDANTS' INITIAL INVALIDITY CONTENTIONS** were served upon the following counsel of record via electronic mail:

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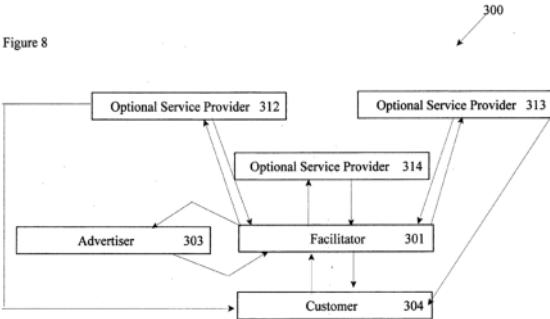
Ex. 391-A –Invalidity of U.S. Patent No. 8,677,391 in view of Nolan¹

US20060053049A1 (“Nolan”), is prior art to U.S. Patent No. 8,677,391 (“the ’391 patent”) under at least 35 U.S.C. §§ 102(a), (e) (pre-AIA). Nolan was filed on September 4, 2004 and published on March 9, 2006.

Amazon’s invalidity contentions are based in part on Giken’s infringement contentions, to the extent Amazon can understand them, because that which infringes, if later, anticipates, if earlier. Amazon offers these contentions without prejudice to any position it may later take as to any claim construction issue. To the extent these contentions reflect claim interpretations implicit in Giken’s infringement contentions, no inference is intended, nor should any be drawn, that Amazon agrees with any claim interpretation implied by Giken’s infringement contentions, and Amazon reserves the right to contest such claim interpretations. Where Amazon cites to a particular figure, the citation encompasses the description of that figure; similarly, where Amazon cites to text describing a figure, the citation encompasses that figure as well.

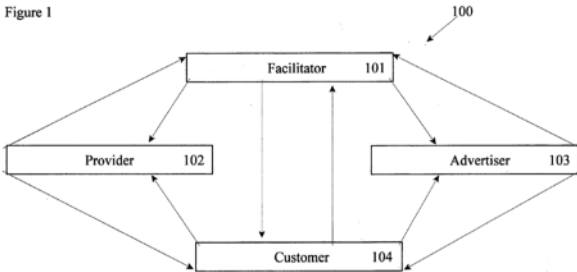
Claim Limitation	Exemplary Disclosure in the Prior Art
1[pre]. A moving image data delivery system capable of being in communication with a plurality of moving image viewing apparatuses and an advertising image data delivery system comprising:	To the extent the preamble is limiting, Nolan expressly or inherently discloses “[a] moving image data delivery system capable of being in communication with a plurality of moving image viewing apparatuses and an advertising image data delivery system.” For example: Figure 1 <pre>graph TD 102[Provider 102] --> 101[Facilitator 101] 101 --> 103[Advertiser 103] 103 --> 104[Customer 104] 104 --> 102 101 --> 104 102 --> 103</pre> Nolan at Fig. 1.

¹ This chart also applies to Nolan combined with the knowledge of a POSITA and combined with the other references cited in this chart.

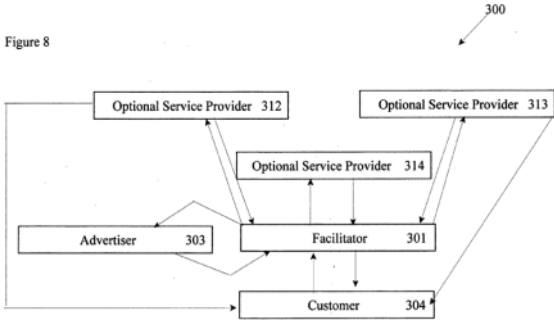
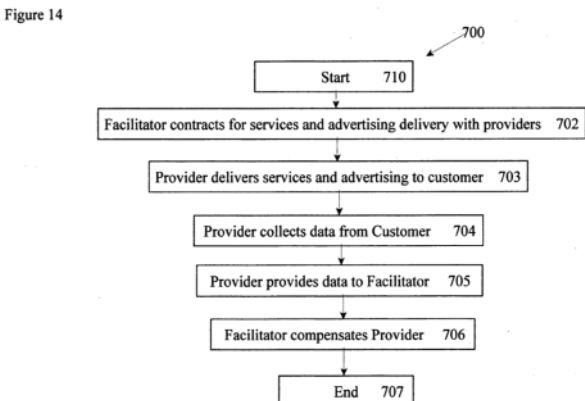
Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 8  Nolan at Fig. 8. “This invention relates generally to the field of a business method and more specifically to a process for delivering a menu of media and computer options potentially at no cost to consumers in exchange for viewing interactive advertisements” Nolan at [0006]. “This invention deviates from previous art in that it offers the same product with the intervention of a Facilitator 101 who acts as a middleman between the contracting parties meaning the Provider 102 and the Customer 104. It is noted that in accordance with FIG. 1 there is the addition of the Advertiser 103 to the diagram. The inclusion of the Advertiser 103 makes possible the opportunity for the Facilitator 101 to charge the Advertiser 103 for advertising commercials sent over some portion of the media.” Nolan at [0077]. “[T]he Facilitator 101 contracts with the other parties, meaning the Provider 102, the Advertiser 103 and the Customer 104, individually to establish relationships that are a benefit to all.” Nolan at [0078]. “The Provider 102 transmits the advertising content as designated by the Facilitator 101.” Nolan at [0079]. “The Facilitator 101 will give the Provider 102 the list of customers that are to receive their particular product or service. The Provider 102 will be instructed as to which channels or sites should run which commercials. The Provider 102 that will be running the commercial will receive instructions form the Facilitator 101 as to what commercial viewing will be needed from each Customer 104.” Nolan at [0079]. “[T]he Provider 102 delivers the services that the Facilitator 101 has contracted for on behalf of the Customer 104.” Nolan at [0082]. “The Provider consists of but is not limited to those who provide television programming or Internet access. The Television Programming Provider is an entity that belongs to the Provider category and typically offers

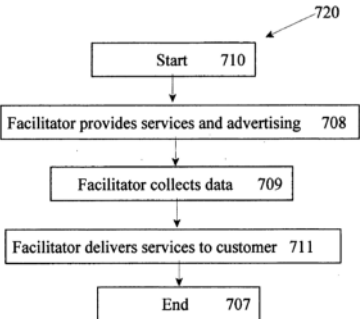
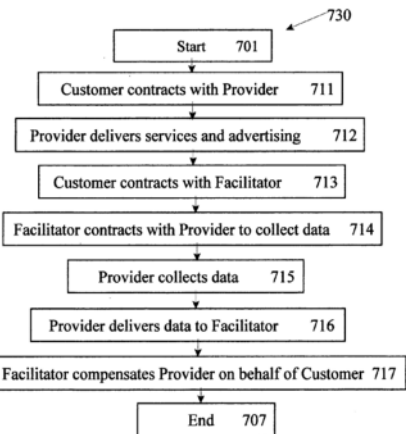
Claim Limitation	Exemplary Disclosure in the Prior Art
	television programs to the public through multichannel services via but not limited to cable, satellite, broadband or the public airwaves. Programming refers to the various channels that offer content directly to the public or through Television Programming Providers via but not limited to cable, satellite, broadband or the public airwaves.” Nolan at [0087]. “The Provider delivers the services as they would with any of their existing Customers. The Provider would run the advertising and the interactive message on the channels or sites according to the direction of the Facilitator. 704.” Nolan at [0109]. “The Facilitator would supply the Provider with software to collect and sort the data from the interactive responses. The Provider would collect that data from the Customer. 705. The Provider would give the data to the Facilitator. 706.” Nolan at [0109]. “The Facilitator contracts with the Providers who deliver media services to the public. 905.” Nolan at [0113]. “The Facilitator arranges for the Provider to deliver the services to the Customer. The Providers would deliver the interactive advertising messages to the Customers via dedicated television channels or Internet sites.” Nolan at [0113]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1a] a storage of a plurality of digital moving image data of television programs to be viewed by the moving image viewing apparatuses;	Nolan expressly or inherently discloses “a storage of a plurality of digital moving image data of television programs to be viewed by the moving image viewing apparatuses.” For example: “[T]he Provider 102 delivers the services that the Facilitator 101 has contracted for on behalf of the Customer 104.” Nolan at [0082]. “The Provider consists of but is not limited to those who provide television programming or Internet access. The Television Programming Provider is an entity that belongs to the Provider category and typically offers television programs to the public through multichannel services via but not limited to cable, satellite, broadband or the public airwaves. Programming refers to the various channels that offer content directly to

Claim Limitation	Exemplary Disclosure in the Prior Art
	the public or through Television Programming Providers via but not limited to cable, satellite, broadband or the public airwaves.” Nolan at [0087]. “In an embodiment this would involve but would not be limited to Television Programming 209, 210, 211 and Internet 208.” Nolan at [0090]. “[T]he Facilitator 201 would contact with one or more companies that are in the business of providing the television programming of several networks here described but not limited to the generic description of Programming 209, 210, 211.” Nolan at [0092]. “The diagram 300 reveals an embodiment that describes alternate Optional Service Providers 312, 313, 314 that are part of but not limited to a menu of services offered to the Customer 304. They are offered to the Customer 304 by the Facilitator 301 and paid for by the Advertiser 303 in exchange for watching a required amount of interactive advertising messages” Nolan at [0100]. “Some of these services are, but are not limited to, streaming video, Internet banking, Internet gaming, land and cellular phone service, satellite radio, and Home Shopping.” Nolan at [0100]. “The Provider delivers the services as they would with any of their existing Customers. The Provider would run the advertising and the interactive message on the channels or sites according to the direction of the Facilitator. 704.” Nolan at [0109]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1bi] a first controller adapted to electrically provide one of the digital moving image data of television programs to one of the moving image viewing apparatuses for allowing to display the television program in exchange of a presentation of an electric data	Nolan expressly or inherently discloses “a first controller adapted to electrically provide one of the digital moving image data of television programs to one of the moving image viewing apparatuses for allowing to display the television program in exchange of a presentation of an electric data denoting a right of viewing the television program.” For example:

Claim Limitation	Exemplary Disclosure in the Prior Art
denoting a right of viewing the television program,	Figure 1  Nolan at Fig. 1. “This invention relates generally to the field of a business method and more specifically to a process for delivering a menu of media and computer options potentially at no cost to consumers in exchange for viewing interactive advertisements” Nolan at [0006]. “One new means for advertising over the Internet is to offer an incentive to the consumer to view the ad message. They are given a coupon that can be redeemed potentially for in-kind goods and services. A pay-per-view incentive offers a free access in return for several paid accesses.” Nolan at [0013]–[0014]. “The Customer 104 views the advertising and is given credit. The Facilitator 101 applies that credit to the cost of the media product that the Customer 104 chooses.” Nolan at [0077]. “The Facilitator 101 arranges for the Customer 104 to receive the services of the Provider 102, potentially, at not out of pocket cost provided they view a prescribed amount of advertising delivered by the Provider 102 on behalf of the Advertiser 103 in an interactive format.” Nolan at [0078]. “The Facilitator 101 pays for the services on behalf of the Customer 104.” Nolan at [0078]. “The Provider 102 uses the software supplied by the Facilitator 101 to transmit and collect data.” Nolan at [0079]. “[T]he Facilitator 101 will solicited for Customers 104 who wish to pursue a service that will provide them with a variety of products and services potentially at no charge to them provided that they meet an interactive advertising viewership requirement.” Nolan at [0081].

Claim Limitation	Exemplary Disclosure in the Prior Art
	“The Facilitator 101 will collect the interactive Customer 104 data and verify the Customer 104 viewership.” Nolan at [0081]. “The Customer 104 will agree to watch a designated number of minutes of interactive advertising that will be based on the number of menu items that they select. They will answer the interactive questions and provide other information requested.” Nolan at [0081]. “In an embodiment, the Facilitator 201 offers a population of potential Customers 204 to the Advertiser 203 at a price determined by the number and demographics of the Customer 204 profile that they wish to reach. The Facilitator 201 captures information as to which Customers 204 were successfully reached, the results of the interactive communication and any other aspect of the retrieved data. (201>203) The Facilitator 201 receives an order from the Advertiser 203 based on the number of Customer 204 that they want to reach and the demographic specifications they want to target. The Advertiser 203 supplies the the Facilitator 210 with the advertising content that they want to run along with the interactive message that they want a response for. The Advertiser 203 may elect to have the Facilitator 210 produce the advertising content and/or the interactive message. The Advertiser 203 will pay the Facilitator 201 for the achieved results based on the contracted price.” Nolan at [0089]. “The Customer 204 would agree to watch a designated number of minutes of interactive advertising that will be based on the number of menu options that they select and the number of credits offered for watching a specific advertisement piece.” Nolan at [0090]. “The diagram 300 reveals an embodiment that describes alternate Optional Service Providers 312, 313, 314 that are part of but not limited to a menu of services offered to the Customer 304. They are offered to the Customer 304 by the Facilitator 301 and paid for by the Advertiser 303 in exchange for watching a required amount of interactive advertising messages” Nolan at [0100]. “The Customer is instructed as to which channel or web site they are to tune in and view to receive credit toward the costs of their selected media package. The Customer should enter their PIN number or provide some other verification of their identity. The Customer would view the advertising message. 506. The customer responds to the interactive information request. If the information is correct, the Customer is notified as to the credit received. 507. The data is collected on software that the Facilitator has supplied to the Provider.” Nolan at [0107].

Claim Limitation	Exemplary Disclosure in the Prior Art
	“The Facilitator contracts with the Customers to receive media services at no out of pocket cost if they meet an interactive advertising viewing requirement equivalent to the cost placed on the services by the Facilitator and the value of the interactive viewing placed on it by the Facilitator. 904” Nolan at [0113]. Figure 8  <pre> graph TD OSP312[Optional Service Provider 312] --> OSP314[Optional Service Provider 314] OSP313[Optional Service Provider 313] --> OSP314 OSP314 --> F301[Facilitator 301] F301 --> A303[Advertiser 303] F301 --> C304[Customer 304] A303 --> C304 </pre> Nolan at Fig. 8. Figure 14  <pre> graph TD S710[Start 710] --> F702[Facilitator contracts for services and advertising delivery with providers 702] F702 --> P703[Provider delivers services and advertising to customer 703] P703 --> C704[Provider collects data from Customer 704] C704 --> P705[Provider provides data to Facilitator 705] P705 --> F706[Facilitator compensates Provider 706] F706 --> E707[End 707] </pre> Nolan at Fig. 14.

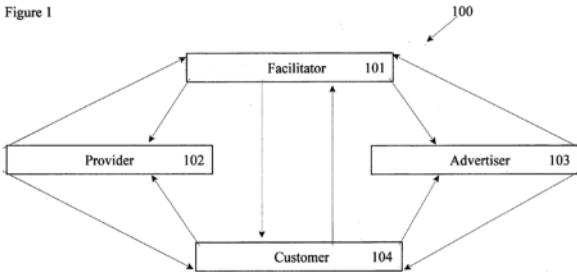
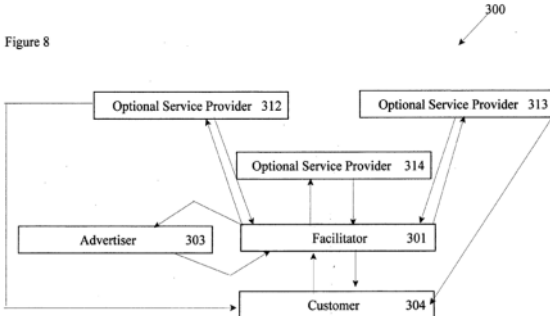
Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 15  <pre> graph TD 710[Start 710] --> 708[Facilitator provides services and advertising 708] 708 --> 709[Facilitator collects data 709] 709 --> 711[Facilitator delivers services to customer 711] 711 --> 707[End 707] </pre> Nolan at Fig. 15. Figure 16  <pre> graph TD 701[Start 701] --> 711[Customer contracts with Provider 711] 711 --> 712[Provider delivers services and advertising 712] 712 --> 713[Customer contracts with Facilitator 713] 713 --> 714[Facilitator contracts with Provider to collect data 714] 714 --> 715[Provider collects data 715] 715 --> 716[Provider delivers data to Facilitator 716] 716 --> 717[Facilitator compensates Provider on behalf of Customer 717] 717 --> 707[End 707] </pre> Nolan at Fig. 16. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art

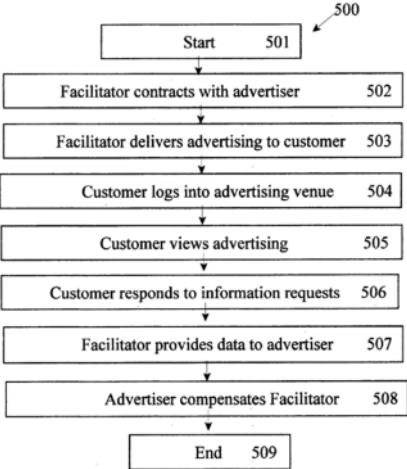
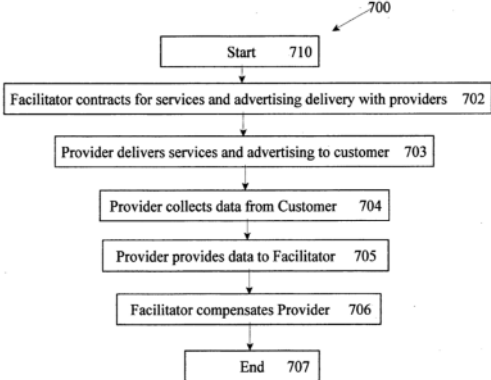
Claim Limitation	Exemplary Disclosure in the Prior Art
	identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1bii] the electric data having been issued to the moving image viewing apparatus, without intermediary of the moving image data delivery system, by the advertising image data delivery system in exchange of a commercial message view by the moving image viewing apparatus, provided by the advertising image data delivery system,	Nolan expressly or inherently discloses “the electric data having been issued to the moving image viewing apparatus, without intermediary of the moving image data delivery system, by the advertising image data delivery system in exchange of a commercial message view by the moving image viewing apparatus, provided by the advertising image data delivery system.” For example: “This invention relates generally to the field of a business method and more specifically to a process for delivering a menu of media and computer options potentially at no cost to consumers in exchange for viewing interactive advertisements” Nolan at [0006]. “One new means for advertising over the Internet is to offer an incentive to the consumer to view the ad message. They are given a coupon that can be redeemed potentially for in-kind goods and services. A pay-per-view incentive offers a free access in return for several paid accesses.” Nolan at [0013]–[0014]. “This invention deviates from previous art in that it offers the same product with the intervention of a Facilitator 101 who acts as a middleman between the contracting parties meaning the Provider 102 and the Customer 104. It is noted that in accordance with FIG. 1 there is the addition of the Advertiser 103 to the diagram. The inclusion of the Advertiser 103 makes possible the opportunity for the Facilitator 101 to charge the Advertiser 103 for advertising commercials sent over some portion of the media.” Nolan at [0077]. “The Customer 104 views the advertising and is given credit. The Facilitator 101 applies that credit to the cost of the media product that the Customer 104 chooses.” Nolan at [0077]. “The Facilitator 101 arranges for the Customer 104 to receive the services of the Provider 102, potentially, at not out of pocket cost provided they view a prescribed amount of advertising delivered by the Provider 102 on behalf of the Advertiser 103 in an interactive format.” Nolan at [0078]. “The Facilitator 101 pays for the services on behalf of the Customer 104.” Nolan at [0078]. “The Facilitator 101 supplies the Provider 102 with the advertising content, the software programming needed to collect the data, and the information that needs to be collected by the Provider 102 and returned to the Facilitator 101.” Nolan at [0078]. “The Provider 102 uses the software supplied by the Facilitator 101 to transmit and collect data.” Nolan at [0079].

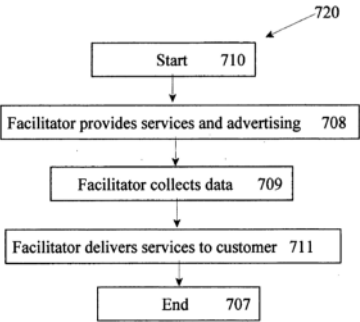
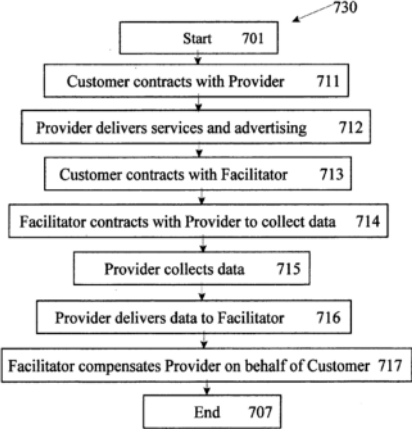
Claim Limitation	Exemplary Disclosure in the Prior Art
	“The Provider 102 transmits the advertising content as designated by the Facilitator 101.” Nolan at [0079]. “The Facilitator 101 processes an order from the Advertiser 103 based on the number of Customers 104 that they want to reach and the demographic specifications that they want to target. The Advertiser 103 provides The Facilitator with the advertising that they want to run along with the interactive message that they want to deliver. The Advertiser 103 may elect to have the Facilitator 101 produce the advertising and interactive message. The Advertiser 103 will pay the Facilitator 101 for the achieved results based on the contract price.” Nolan at [0080]. “The Advertiser 103 provides The Facilitator with the advertising that they want to run along with the interactive message that they want to deliver. The Advertiser 103 may elect to have the Facilitator 101 produce the advertising and interactive message” Nolan at [0080]. “[T]he Facilitator 101 will solicited for Customers 104 who wish to pursue a service that will provide them with a variety of products and services potentially at no charge to them provided that they meet an interactive advertising viewership requirement.” Nolan at [0081]. “The Facilitator 101 will collect the interactive Customer 104 data and verify the Customer 104 viewership.” Nolan at [0081]. “The Customer 104 will agree to watch a designated number of minutes of interactive advertising that will be based on the number of menu items that they select. They will answer the interactive questions and provide other information requested.” Nolan at [0081]. “[T]he Provider 102 delivers the services that the Facilitator 101 has contracted for on behalf of the Customer 104.” Nolan at [0082]. “The Provider 102 also delivers the advertising messages to the Customer 104.” Nolan at [0082]. “The Customer 104 responds to the interactive presentation of the advertising message.” Nolan at [0082]. “In an embodiment, the Facilitator 201 offers a population of potential Customers 204 to the Advertiser 203 at a price determined by the number and demographics of the Customer 204 profile that they wish to reach. The Facilitator 201 captures information as to which Customers 204 were successfully reached, the results of the interactive communication and any other aspect of the retrieved data. (201>203) The Facilitator 201 receives an order from the Advertiser 203 based on the number of Customer 204 that they want to reach and the demographic specifications they want to target. The Advertiser 203 supplies the the Facilitator 210 with the advertising content that they want to run along with the interactive message that they want a response for.

Claim Limitation	Exemplary Disclosure in the Prior Art
	The Advertiser 203 may elect to have the Facilitator 210 produce the advertising content and/or the interactive message. The Advertiser 203 will pay the Facilitator 201 for the achieved results based on the contracted price.” Nolan at [0089]. “The Customer 204 will contract with the Facilitator 201 to provide selections of services from a menu. An embodiment would offer the basic services comprised of a Television Programming Provider 206 and an Internet Provider 207. The Customer 204 would agree to pay the Facilitator 201 in currency for the media product should they not meet the criteria of the interactive viewership.” Nolan at [0090]. “The Customer 204 would agree to watch a designated number of minutes of interactive advertising that will be based on the number of menu options that they select and the number of credits offered for watching a specific advertisement piece.” Nolan at [0090]. “The Facilitator 201 will give the Television Program Provider 206 the advertising messages to be run, the times that they will be run and the channels on which to run them.” Nolan at [0092]. “The Television Program Providers 206 will install and maintain equipment that will allow the Customer 204 to review and respond to the interactive features of the advertising messages. (209, 210, 211>206” Nolan at [0092]. “The diagram 300 reveals an embodiment that describes alternate Optional Service Providers 312, 313, 314 that are part of but not limited to a menu of services offered to the Customer 304. They are offered to the Customer 304 by the Facilitator 301 and paid for by the Advertiser 303 in exchange for watching a required amount of interactive advertising messages” Nolan at [0100]. “The services will be offered at a market price and the Customer 304 would be responsible for the monetary cost of the various options or the equivalent in interactive commercial viewing minutes” Nolan at [0100]. “The Facilitator instructs the Television Programming Provider or the Internet Provider to run the Advertiser's message on a designated channel or web site.” Nolan at [0107]. “The Customer is instructed as to which channel or web site they are to tune in and view to receive credit toward the costs of their selected media package. The Customer should enter their PIN number or provide some other verification of their identity. The Customer would view the advertising message. 506. The customer responds to the interactive information request. If the information is correct, the Customer is notified as to the credit received. 507. The data is collected on software that the Facilitator has supplied to the Provider.” Nolan at [0107].

Claim Limitation	Exemplary Disclosure in the Prior Art
	“The Provider delivers the services as they would with any of their existing Customers. The Provider would run the advertising and the interactive message on the channels or sites according to the direction of the Facilitator. 704” Nolan at [0109]. “The Facilitator would supply the Provider with software to collect and sort the data from the interactive responses. The Provider would collect that data from the Customer. 705. The Provider would give the data to the Facilitator. 706.” Nolan at [0109]. “The Facilitator would record their responses and the minutes viewed on software. The data would be summarized so the Facilitator could validate the order from the Advertiser who would compensate the Facilitator based on the results. 710. The Facilitator would continue to provide services to the Customer as long as they keep current on their monetary or interactive viewing obligation. 707.” Nolan at [0110]. “The Facilitator contracts with the Customers to receive media services at no out of pocket cost if they meet an interactive advertising viewing requirement equivalent to the cost placed on the services by the Facilitator and the value of the interactive viewing placed on it by the Facilitator. 904” Nolan at [0113]. “The Facilitator arranges for the Provider to deliver the services to the Customer. The Providers would deliver the interactive advertising messages to the Customers via dedicated television channels or Internet sites.” Nolan at [0113]. “The Facilitator arranges with the Advertiser to supply a produced commercial message and the interactive information request that would be part of the body of the advertising message or a tag on the end. The Advertiser might elect to have the Facilitator produce and supply the commercial and interactive request. 909.” Nolan at [0113]. “The Facilitator would supply the software to collect the Customer responses and viewing credit” Nolan at [0113].

Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 1  Nolan at Fig. 1. Figure 8  Nolan at Fig. 8.

Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 12  <pre> graph TD 501[Start 501] --> 502[Facilitator contracts with advertiser 502] 502 --> 503[Facilitator delivers advertising to customer 503] 503 --> 504[Customer logs into advertising venue 504] 504 --> 505[Customer views advertising 505] 505 --> 506[Customer responds to information requests 506] 506 --> 507[Facilitator provides data to advertiser 507] 507 --> 508[Advertiser compensates Facilitator 508] 508 --> 509[End 509] </pre> Nolan at Fig.12. Figure 14  <pre> graph TD 710[Start 710] --> 702[Facilitator contracts for services and advertising delivery with providers 702] 702 --> 703[Provider delivers services and advertising to customer 703] 703 --> 704[Provider collects data from Customer 704] 704 --> 705[Provider provides data to Facilitator 705] 705 --> 706[Facilitator compensates Provider 706] 706 --> 707[End 707] </pre> Nolan at Fig. 14.

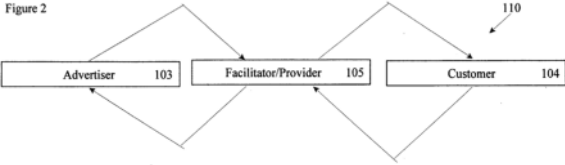
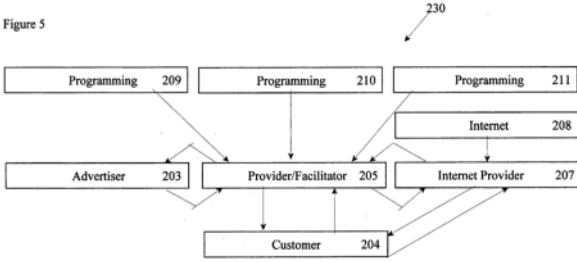
Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 15  <pre> graph TD 710[Start 710] --> 708[Facilitator provides services and advertising 708] 708 --> 709[Facilitator collects data 709] 709 --> 711[Facilitator delivers services to customer 711] 711 --> 707[End 707] </pre> Nolan at Fig. 15. Figure 16  <pre> graph TD 701[Start 701] --> 711[Customer contracts with Provider 711] 711 --> 712[Provider delivers services and advertising 712] 712 --> 713[Customer contracts with Facilitator 713] 713 --> 714[Facilitator contracts with Provider to collect data 714] 714 --> 715[Provider collects data 715] 715 --> 716[Provider delivers data to Facilitator 716] 716 --> 717[Facilitator compensates Provider on behalf of Customer 717] 717 --> 707[End 707] </pre> Nolan at Fig. 16. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art

Claim Limitation	Exemplary Disclosure in the Prior Art
	identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1biii] wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message; and	Nolan expressly or inherently discloses “wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message.” For example: “The Facilitator pays the Provider 102 for the service.” Nolan at [0077]. “The Provider 102 gives the accumulated data to the Facilitator 101.” Nolan at [0079]. “The Facilitator 101 receives the capture information from the Provider 102 that summarizes the information pertinent to the Customers 104 reached, the results of the interactive communication, and other relevant data. (103>101)” Nolan at [0080]. “The Customer 104 responds to the interactive presentation of the advertising message. This enables the Provider 102 to complete its obligation to the Facilitator 101 and receive compensation.” Nolan at [0082]. “The Facilitator 201 will compensate the Television Program Provider 206 for the service on behalf of the Customer 204, for the interactive data that is retrieved, and for the channels on which the messages are run.” Nolan at [0092]. “The Facilitator 301 would package those services into menu options for the Customer 304. The Facilitator 301 would pay the Optional Service Providers 312, 313, 314 out of the revenue generated from the Advertisers 303 as a result of the interactive advertising viewed by the Customer 304.” Nolan at [0103]. “The Customer is instructed as to which channel or web site they are to tune in and view to receive credit toward the costs of their selected media package. The Customer should enter their PIN number or provide some other verification of their identity. The Customer would view the advertising message. 506. The customer responds to the interactive information request. If the information is correct, the Customer is notified as to the credit received. 507. The data is collected on software that the Facilitator has supplied to the Provider.” Nolan at [0107]. “The Facilitator distributes the funds to itself and the Providers on behalf of the Customer. 509. An embodiment of this segment of the process is completed.” Nolan at [0107].

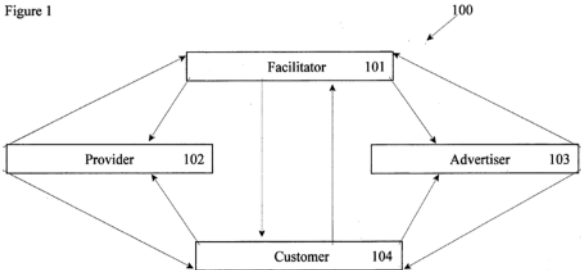
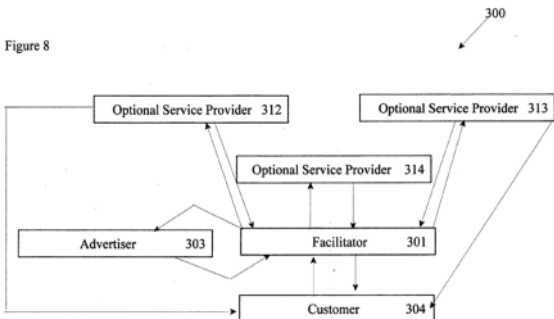
Claim Limitation	Exemplary Disclosure in the Prior Art
	“The Facilitator would supply the Provider with software to collect and sort the data from the interactive responses. The Provider would collect that data from the Customer. 705. The Provider would give the data to the Facilitator. 706.” Nolan at [0109]. “The facilitator would compensate the Provider for the service to the Customer, the channels or sites and the collection of the data out of the proceeds from the Advertisers.” Nolan at [0109]. “The Provider would receive and compile the data from the Customer using software supplied by the Facilitator. They would do this over dedicated television channels and Internet sites. 912. The Provider would collect the answers to information requests in the interactive messages along with the viewing time to be credited to the Customer. They would use the software supplied by the Facilitator. 913. The Provider would give the collected data in the form designed into the software by the Facilitator. 914.” Nolan at [0113]. “The Facilitator compensates the Provider for the cost of the services per their negotiated contract. 917” Nolan at [0113]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1c] a second controller adapted to receive an electric payment from the advertising image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data.	Nolan expressly or inherently discloses “a second controller adapted to receive an electric payment from the advertising image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data.” For example: “The Facilitator pays the Provider 102 for the service.” Nolan at [0077]. “The Facilitator 101 supplies the Provider 102 with the advertising content, the software programming needed to collect the data, and the information that needs to be collected by the Provider 102 and returned to the Facilitator 101.” Nolan at [0078]. “The Provider 102 gives the accumulated data to the Facilitator 101.” Nolan at [0079].

Claim Limitation	Exemplary Disclosure in the Prior Art
	“The Facilitator 101 receives the capture information from the Provider 102 that summarizes the information pertinent to the Customers 104 reached, the results of the interactive communication, and other relevant data. (103>101)” Nolan at [0080]. “The Customer 104 responds to the interactive presentation of the advertising message. This enables the Provider 102 to complete its obligation to the Facilitator 101 and receive compensation.” Nolan at [0082]. “The Facilitator 201 will collect funds from the Advertisers 203 who have had their interactive message viewed by the Customers 204 and pay the Internet Provider 207 for that service. The Facilitator 201 may but will not be limited to the use of the Internet 208 in certain circumstances as an alternative means for the viewing and responding to the interactive advertising method.” Nolan at [0091]. “The Facilitator 201 will compensate the Television Program Provider 206 for the service on behalf of the Customer 204, for the interactive data that is retrieved, and for the channels on which the messages are run.” Nolan at [0092]. “The Television Program Providers 206 will collect these messages using computer software supplied by the Facilitator 201 and give the data to the Facilitator 201 who will pass it on to the Advertiser 203.” Nolan at [0092]. “The diagram 300 reveals an embodiment that describes alternate Optional Service Providers 312, 313, 314 that are part of but not limited to a menu of services offered to the Customer 304. They are offered to the Customer 304 by the Facilitator 301 and paid for by the Advertiser 303 in exchange for watching a required amount of interactive advertising messages” Nolan at [0100]. “The Facilitator 301 would pay the Optional Service Provider 312, 313, 314 according to the costs negotiated.” Nolan at [0100]. “The Facilitator 301 would package those services into menu options for the Customer 304. The Facilitator 301 would pay the Optional Service Providers 312, 313, 314 out of the revenue generated from the Advertisers 303 as a result of the interactive advertising viewed by the Customer 304.” Nolan at [0103]. “The Customer is instructed as to which channel or web site they are to tune in and view to receive credit toward the costs of their selected media package. The Customer should enter their PIN number or provide some other verification of their identity. The Customer would view the advertising message. 506. The customer responds to the interactive information request. If the information is correct, the Customer is

Claim Limitation	Exemplary Disclosure in the Prior Art
	notified as to the credit received. 507. The data is collected on software that the Facilitator has supplied to the Provider.” Nolan at [0107]. “The Provider gives the information to the Facilitator.” Nolan at [0107]. “The Facilitator distributes the funds to itself and the Providers on behalf of the Customer. 509. An embodiment of this segment of the process is completed.” Nolan at [0107]. “The Facilitator would supply the Provider with software to collect and sort the data from the interactive responses. The Provider would collect that data from the Customer. 705. The Provider would give the data to the Facilitator. 706.” Nolan at [0109]. “The facilitator would compensate the Provider for the service to the Customer, the channels or sites and the collection of the data out of the proceeds from the Advertisers.” Nolan at [0109]. “The Facilitator would record their responses and the minutes viewed on software. The data would be summarized so the Facilitator could validate the order from the Advertiser who would compensate the Facilitator based on the results. 710. The Facilitator would continue to provide services to the Customer as long as they keep current on their monetary or interactive viewing obligation. 707.” Nolan at [0110]. “The Provider would receive and compile the data from the Customer using software supplied by the Facilitator. They would do this over dedicated television channels and Internet sites. 912. The Provider would collect the answers to information requests in the interactive messages along with the viewing time to be credited to the Customer. They would use the software supplied by the Facilitator. 913. The Provider would give the collected data in the form designed into the software by the Facilitator. 914.” Nolan at [0113]. “The Facilitator compensates the Provider for the cost of the services per their negotiated contract. 917” Nolan at [0113]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.

Claim Limitation	Exemplary Disclosure in the Prior Art
9. The moving image data delivery system according to claim 1, wherein the advertising image data delivery system is integrated into the moving image data delivery system.	Nolan expressly or inherently discloses “[t]he moving image data delivery system according to claim 1, wherein the advertising image data delivery system is integrated into the moving image data delivery system.” For example: Figure 2  Nolan at Fig. 2. “The Facilitator/Provider is the inventor and/or an authorized agent in an alternate embodiment of the invention where the Facilitator Provider performs a dual role of the Facilitator and either the Television Programming Provider or the Internet Provider or both.” Nolan at [0087]. Figure 5  Nolan at Fig. 5. “6. Dual Roles for the Facilitator FIG. 5 is a schematic block diagram 230 that illustrates an approach for setting up an enterprise that contracts to offer media to customer according to an alternate embodiment described herein. The diagram 230 reveals an embodiment where the Facilitator 201 would perform the role as described herein but would also perform the role of Television Programming Provider 210 and/or the Internet Provider 207. The Facilitator 201 would become the Facilitator/Provider 205. (205>209, 210, 211) The Facilitator/Provider 205 would pursue contractual arrangements to secure access to the Programming 209, 210, 211 and/or the Internet 208 without limit as to the method of delivery.

Claim Limitation	Exemplary Disclosure in the Prior Art
	In an embodiment, (205>203) the Facilitator/Provider 205 would offer a population of potential Customer 204 to the Advertiser 203 at a market price determined by the number and demographics of the Customer 204 profile that the Advertiser 203 wishes to reach. The Facilitator/Provider 205 captures information as to which Customers 204 were successfully reached, the results of the interactive communication and any other aspect of the received data. (203>205) The Facilitator/Provider 205 receives an order from the Advertiser 203 based on the number of Customers 204 that they wish to reach and the demographic specifications they want to target. The Advertiser 203 supplies the Facilitator/Provider 205 with the advertising content that the Advertiser 203 wants to run along with the interactive message that they want to deliver. The Advertiser 203 may elect to have the Facilitator/Provider 205 to produce the commercial content and/or the interactive message. The Advertiser 203 will pay the Facilitator/Provider 205 for the achieved results based on the contracted price. In another feature of an embodiment, (205>204) the Facilitator/Provider 205 would solicit for Customers 204 who wish to engage a service that will provide them with a variety of media products and services potentially at no charge to them provided that they meet an interactive viewership requirement. The Facilitator/Provider 205 would collect demographic data in order to make a profile to give to the Advertiser 203. (204>205) The Customer 204 will contract with the Facilitator/Provider 205 to supply a selection of services from a menu. In an embodiment, the basic services would include, but not be limited to, the Programming 209, 210, 211 and the Internet 208. The Customer 204 would agree to pay a market price in currency for the product should they not meet the criteria of interactive viewership. The Customer 204 would agree to watch a designated number of minutes of interactive advertising that would be based on the number of menu options that they select. The Customer 204 will answer the interactive questions or provide other information requested. The Customer 204 would give the required demographic information to the Facilitator/Provider 205 that is deemed necessary to form a demographic profile to give to the Advertiser 203 as part of a general population of potential commercial targets. Furthermore in an embodiment, (208>205) The Facilitator/Provider 205 would package and present to the Customer 204 access and a format for receiving the Worldwide Web through an Internet 208 system. (209, 210, 211>205) The Facilitator/Provider 205 would contract with the various entities that produce and/or schedule television programs. The Programming 209, 210, 211 would be packaged in the same form as it is with the Television Programming Provider 206 and offered to the Customer 204 by the Facilitator/Provider 205.” Nolan at [0093]–[0097]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive,

Claim Limitation	Exemplary Disclosure in the Prior Art
	SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
10[pre]. An advertising image data delivery system capable of being in communication with a plurality of moving image viewing apparatuses, a moving image data delivery system and an advertiser paying for the commercial message comprising:	To the extent the preamble is limiting, Nolan expressly or inherently discloses “[a]n advertising image data delivery system capable of being in communication with a plurality of moving image viewing apparatuses, a moving image data delivery system and an advertiser paying for the commercial message.” For example: Figure 1  Nolan at Fig. 1. Figure 8  Nolan at Fig. 8. “This invention deviates from previous art in that it offers the same product with the intervention of a Facilitator 101 who acts as a middleman between the contracting parties meaning the Provider 102 and the Customer 104. It is noted that in accordance with FIG. 1 there is the addition of the Advertiser 103 to the

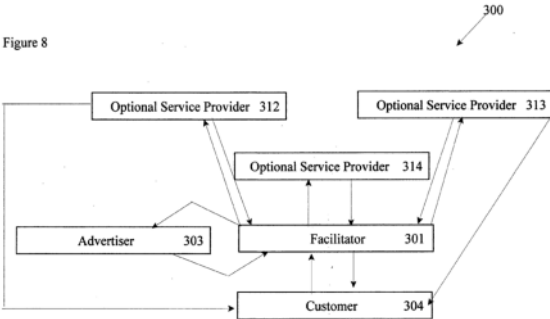
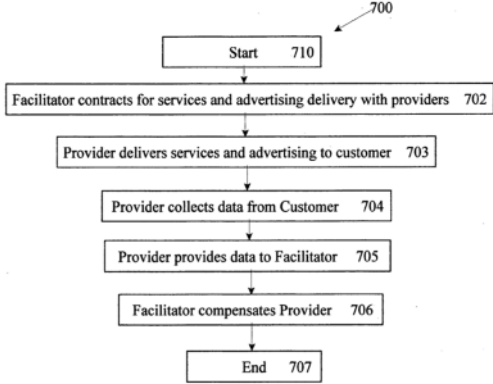
Claim Limitation	Exemplary Disclosure in the Prior Art
	diagram. The inclusion of the Advertiser 103 makes possible the opportunity for the Facilitator 101 to charge the Advertiser 103 for advertising commercials sent over some portion of the media.” Nolan at [0077]. “The Customer 104 views the advertising and is given credit. The Facilitator 101 applies that credit to the cost of the media product that the Customer 104 chooses.” Nolan at [0077]. “[T]he Facilitator 101 contracts with the other parties, meaning the Provider 102, the Advertiser 103 and the Customer 104, individually to establish relationships that are a benefit to all.” Nolan at [0078]. “The Provider 102 transmits the advertising content as designated by the Facilitator 101.” Nolan at [0079]. “The Facilitator 101 will give the Provider 102 the list of customers that are to receive their particular product or service. The Provider 102 will be instructed as to which channels or sites should run which commercials. The Provider 102 that will be running the commercial will receive instructions form the Facilitator 101 as to what commercial viewing will be needed from each Customer 104.” Nolan at [0079]. “The Advertiser 103 provides The Facilitator with the advertising that they want to run along with the interactive message that they want to deliver. The Advertiser 103 may elect to have the Facilitator 101 produce the advertising and interactive message” Nolan at [0080]. “In an embodiment, the Facilitator 201 offers a population of potential Customers 204 to the Advertiser 203 at a price determined by the number and demographics of the Customer 204 profile that they wish to reach. The Facilitator 201 captures information as to which Customers 204 were successfully reached, the results of the interactive communication and any other aspect of the retrieved data. (201>203) The Facilitator 201 receives an order from the Advertiser 203 based on the number of Customer 204 that they want to reach and the demographic specifications they want to target. The Advertiser 203 supplies the the Facilitator 210 with the advertising content that they want to run along with the interactive message that they want a response for. The Advertiser 203 may elect to have the Facilitator 210 produce the advertising content and/or the interactive message. The Advertiser 203 will pay the Facilitator 201 for the achieved results based on the contracted price.” Nolan at [0089]. “[T]he Facilitator 201 would contact with one or more companies that are in the business of providing the television programming of several networks here described but not limited to the generic description of Programming 209, 210, 211.” Nolan at [0092]. “The Facilitator 201 will give the Television Program Provider 206 the advertising messages to be run, the times that they will be run and the channels on which to run them.” Nolan at [0092].

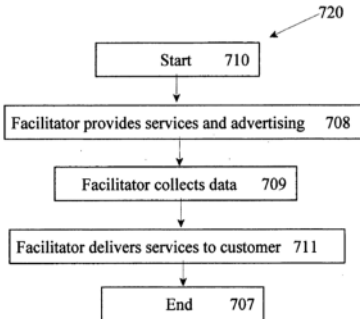
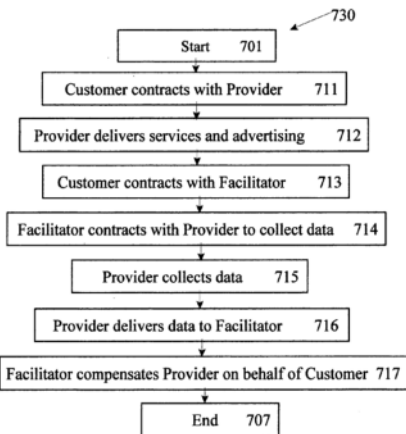
Claim Limitation	Exemplary Disclosure in the Prior Art
	“The diagram 300 reveals an embodiment that describes alternate Optional Service Providers 312, 313, 314 that are part of but not limited to a menu of services offered to the Customer 304. They are offered to the Customer 304 by the Facilitator 301 and paid for by the Advertiser 303 in exchange for watching a required amount of interactive advertising messages” Nolan at [0100]. “The Facilitator instructs the Television Programming Provider or the Internet Provider to run the Advertiser's message on a designated channel or web site.” Nolan at [0107]. “The Facilitator would supply the Provider with software to collect and sort the data from the interactive responses. The Provider would collect that data from the Customer. 705. The Provider would give the data to the Facilitator. 706.” Nolan at [0109]. “The Facilitator sets up to contract with the elements of the business which include but are not limited to the Customers, the Providers and the Advertisers. 903.” Nolan at [0113]. “The Facilitator contracts with the Providers who deliver media services to the public. 905.” Nolan at [0113]. “The Facilitator contracts with businesses who wish to have an advertising message seen by members of the public. 906.” Nolan at [0113]. “The Facilitator arranges with the Advertiser to supply a produced commercial message and the interactive information request that would be part of the body of the advertising message or a tag on the end. The Advertiser might elect to have the Facilitator produce and supply the commercial and interactive request. 909.” Nolan at [0113]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10a] a storage of a plurality of advertising image data of commercial messages to be viewed by the moving image viewing apparatuses;	Nolan expressly or inherently discloses “a storage of a plurality of advertising image data of commercial messages to be viewed by the moving image viewing apparatuses.” For example: “This invention deviates from previous art in that it offers the same product with the intervention of a Facilitator 101 who acts as a middleman between the contracting parties meaning the Provider 102 and the Customer 104. It is noted that in accordance with FIG. 1 there is the addition of the Advertiser 103 to the

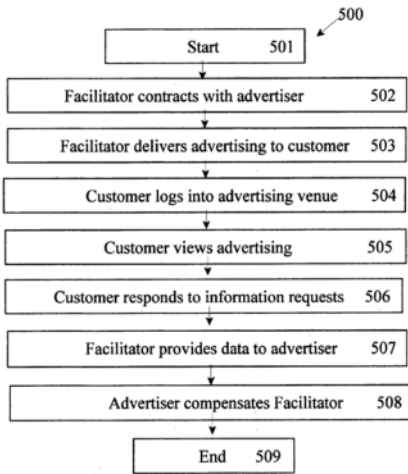
Claim Limitation	Exemplary Disclosure in the Prior Art
	diagram. The inclusion of the Advertiser 103 makes possible the opportunity for the Facilitator 101 to charge the Advertiser 103 for advertising commercials sent over some portion of the media.” Nolan at [0077]. “The Provider 102 transmits the advertising content as designated by the Facilitator 101.” Nolan at [0079]. “The Advertiser 103 provides The Facilitator with the advertising that they want to run along with the interactive message that they want to deliver. The Advertiser 103 may elect to have the Facilitator 101 produce the advertising and interactive message” Nolan at [0080]. “In an embodiment, the Facilitator 201 offers a population of potential Customers 204 to the Advertiser 203 at a price determined by the number and demographics of the Customer 204 profile that they wish to reach. The Facilitator 201 captures information as to which Customers 204 were successfully reached, the results of the interactive communication and any other aspect of the retrieved data. (201>203) The Facilitator 201 receives an order from the Advertiser 203 based on the number of Customer 204 that they want to reach and the demographic specifications they want to target. The Advertiser 203 supplies the the Facilitator 210 with the advertising content that they want to run along with the interactive message that they want a response for. The Advertiser 203 may elect to have the Facilitator 210 produce the advertising content and/or the interactive message. The Advertiser 203 will pay the Facilitator 201 for the achieved results based on the contracted price.” Nolan at [0089]. “The Facilitator 201 will give the Television Program Provider 206 the advertising messages to be run, the times that they will be run and the channels on which to run them.” Nolan at [0092]. “The Facilitator instructs the Television Programming Provider or the Internet Provider to run the Advertiser's message on a designated channel or web site.” Nolan at [0107]. “The Facilitator arranges with the Advertiser to supply a produced commercial message and the interactive information request that would be part of the body of the advertising message or a tag on the end. The Advertiser might elect to have the Facilitator produce and supply the commercial and interactive request. 909.” Nolan at [0113]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.

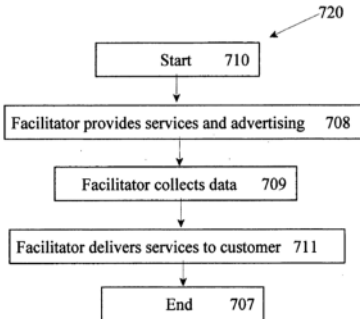
Claim Limitation	Exemplary Disclosure in the Prior Art
[10bi] a first controller adapted to issue, without intermediary of the moving image data delivery system, to one of the moving image viewing apparatuses an electric data denoting a right of viewing a television program in exchange of commercial message view by the moving image viewing apparatus, provided by the advertising image data delivery system,	Nolan expressly or inherently discloses “a first controller adapted to issue, without intermediary of the moving image data delivery system, to one of the moving image viewing apparatuses an electric data denoting a right of viewing a television program in exchange of commercial message view by the moving image viewing apparatus, provided by the advertising image data delivery system.” For example: “This invention relates generally to the field of a business method and more specifically to a process for delivering a menu of media and computer options potentially at no cost to consumers in exchange for viewing interactive advertisements” Nolan at [0006]. “One new means for advertising over the Internet is to offer an incentive to the consumer to view the ad message. They are given a coupon that can be redeemed potentially for in-kind goods and services. A pay-per-view incentive offers a free access in return for several paid accesses.” Nolan at [0013]–[0014]. “The Customer 104 views the advertising and is given credit. The Facilitator 101 applies that credit to the cost of the media product that the Customer 104 chooses.” Nolan at [0077]. “The Facilitator 101 arranges for the Customer 104 to receive the services of the Provider 102, potentially, at not out of pocket cost provided they view a prescribed amount of advertising delivered by the Provider 102 on behalf of the Advertiser 103 in an interactive format.” Nolan at [0078]. “The Facilitator 101 pays for the services on behalf of the Customer 104.” Nolan at [0078]. “The Provider 102 uses the software supplied by the Facilitator 101 to transmit and collect data.” Nolan at [0079]. “[T]he Facilitator 101 will solicited for Customers 104 who wish to pursue a service that will provide them with a variety of products and services potentially at no charge to them provided that they meet an interactive advertising viewership requirement.” Nolan at [0081]. “The Facilitator 101 will collect the interactive Customer 104 data and verify the Customer 104 viewership.” Nolan at [0081]. “The Customer 104 will agree to watch a designated number of minutes of interactive advertising that will be based on the number of menu items that they select. They will answer the interactive questions and provide other information requested.” Nolan at [0081]. “In an embodiment, the Facilitator 201 offers a population of potential Customers 204 to the Advertiser 203 at a price determined by the number and demographics of the Customer 204 profile that they wish to reach. The Facilitator 201 captures information as to which Customers 204 were successfully reached, the results of

Claim Limitation	Exemplary Disclosure in the Prior Art
	the interactive communication and any other aspect of the retrieved data. (201>203) The Facilitator 201 receives an order from the Advertiser 203 based on the number of Customer 204 that they want to reach and the demographic specifications they want to target. The Advertiser 203 supplies the the Facilitator 210 with the advertising content that they want to run along with the interactive message that they want a response for. The Advertiser 203 may elect to have the Facilitator 210 produce the advertising content and/or the interactive message. The Advertiser 203 will pay the Facilitator 201 for the achieved results based on the contracted price.” Nolan at [0089]. “The Customer 204 would agree to watch a designated number of minutes of interactive advertising that will be based on the number of menu options that they select and the number of credits offered for watching a specific advertisement piece.” Nolan at [0090]. “The diagram 300 reveals an embodiment that describes alternate Optional Service Providers 312, 313, 314 that are part of but not limited to a menu of services offered to the Customer 304. They are offered to the Customer 304 by the Facilitator 301 and paid for by the Advertiser 303 in exchange for watching a required amount of interactive advertising messages” Nolan at [0100]. “The Customer is instructed as to which channel or web site they are to tune in and view to receive credit toward the costs of their selected media package. The Customer should enter their PIN number or provide some other verification of their identity. The Customer would view the advertising message. 506. The customer responds to the interactive information request. If the information is correct, the Customer is notified as to the credit received. 507. The data is collected on software that the Facilitator has supplied to the Provider.” Nolan at [0107]. “The Facilitator contracts with the Customers to receive media services at no out of pocket cost if they meet an interactive advertising viewing requirement equivalent to the cost placed on the services by the Facilitator and the value of the interactive viewing placed on it by the Facilitator. 904” Nolan at [0113].

Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 8  Nolan at Fig. 8. Figure 14  Nolan at Fig. 14.

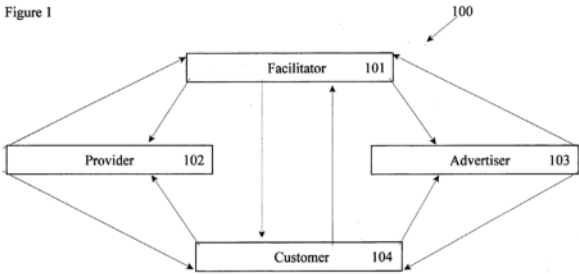
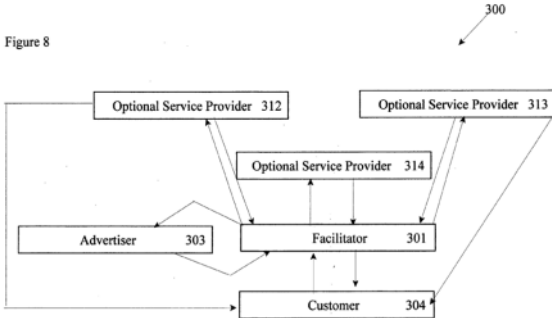
Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 15  <pre> graph TD 720 --> 710[Start 710] 710 --> 708[Facilitator provides services and advertising 708] 708 --> 709[Facilitator collects data 709] 709 --> 711[Facilitator delivers services to customer 711] 711 --> 707[End 707] </pre> Nolan at Fig. 15. Figure 16  <pre> graph TD 730 --> 701[Start 701] 701 --> 711[Customer contracts with Provider 711] 711 --> 712[Provider delivers services and advertising 712] 712 --> 713[Customer contracts with Facilitator 713] 713 --> 714[Facilitator contracts with Provider to collect data 714] 714 --> 715[Provider collects data 715] 715 --> 716[Provider delivers data to Facilitator 716] 716 --> 717[Facilitator compensates Provider on behalf of Customer 717] 717 --> 707[End 707] </pre> Nolan at Fig. 16. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.

Claim Limitation	Exemplary Disclosure in the Prior Art
[10bii] wherein the one of the moving image viewing apparatuses is provided with the television program from the moving image data delivery system in exchange of a presentation of the electric data to the moving image data delivery system from the one of the moving image viewing apparatus;	Nolan expressly or inherently discloses “wherein the one of the moving image viewing apparatuses is provided with the television program from the moving image data delivery system in exchange of a presentation of the electric data to the moving image data delivery system from the one of the moving image viewing apparatus.” For example: <i>See</i> [1bi]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10ci] a second controller adapted to receive an electric payment from the advertiser in exchange of a presentation of a report from the advertising image data delivery system to the advertiser, the report indicating that the advertising image data delivery system issues the electric data to the moving image viewing apparatuses,	Nolan expressly or inherently discloses “a second controller adapted to receive an electric payment from the advertiser in exchange of a presentation of a report from the advertising image data delivery system to the advertiser, the report indicating that the advertising image data delivery system issues the electric data to the moving image viewing apparatuses.” For example: Figure 12  <pre> graph TD 500 --> 501[Start 501] 501 --> 502[Facilitator contracts with advertiser 502] 502 --> 503[Facilitator delivers advertising to customer 503] 503 --> 504[Customer logs into advertising venue 504] 504 --> 505[Customer views advertising 505] 505 --> 506[Customer responds to information requests 506] 506 --> 507[Facilitator provides data to advertiser 507] 507 --> 508[Advertiser compensates Facilitator 508] 508 --> 509[End 509] </pre> Nolan at Fig.12.

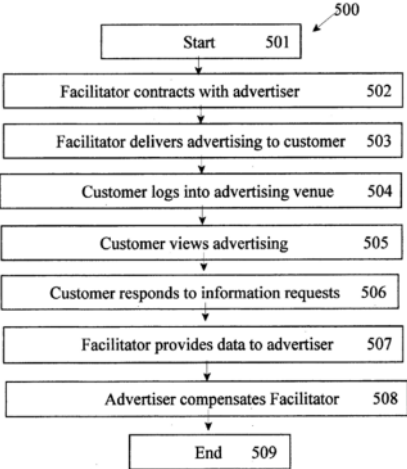
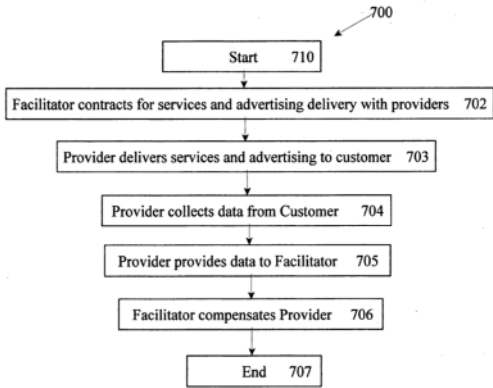
Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 15  <pre> graph TD 720 --> 710[Start 710] 710 --> 708[Facilitator provides services and advertising 708] 708 --> 709[Facilitator collects data 709] 709 --> 711[Facilitator delivers services to customer 711] 711 --> 707[End 707] </pre> Nolan at Fig. 15. “The Facilitator 101 processes an order from the Advertiser 103 based on the number of Customers 104 that they want to reach and the demographic specifications that they want to target. The Advertiser 103 provides The Facilitator with the advertising that they want to run along with the interactive message that they want to deliver. The Advertiser 103 may elect to have the Facilitator 101 produce the advertising and interactive message. The Advertiser 103 will pay the Facilitator 101 for the achieved results based on the contract price.” Nolan at [0080]. “[T]he Advertiser 103 is indirectly responsible for the programs and service enjoyed by the Customer 104. They supply the Facilitator 101 and the Provider 102 with the message and interactive requirements that allow them to be compensated for delivery of the information contained in the message. (104>103) The Customer 104 allows themselves to be informed about products and services by the Advertiser 103. They confirm an understanding of the message, product or service through the Providers 102 and the Facilitator 101 so that the Advertiser 103 can compensate them for the services.” Nolan at [0083]. “In an embodiment, the Facilitator 201 offers a population of potential Customers 204 to the Advertiser 203 at a price determined by the number and demographics of the Customer 204 profile that they wish to reach. The Facilitator 201 captures information as to which Customers 204 were successfully reached, the results of the interactive communication and any other aspect of the retrieved data. (201>203) The Facilitator 201 receives an order from the Advertiser 203 based on the number of Customer 204 that they want to reach and the demographic specifications they want to target. The Advertiser 203 supplies the the Facilitator 210 with the advertising content that they want to run along with the interactive message that they want a response for. The Advertiser 203 may elect to have the Facilitator 210 produce the advertising content and/or the

Claim Limitation	Exemplary Disclosure in the Prior Art
	interactive message. The Advertiser 203 will pay the Facilitator 201 for the achieved results based on the contracted price.” Nolan at [0089]. “The Facilitator 201 will collect funds from the Advertisers 203 who have had their interactive message viewed by the Customers 204 and pay the Internet Provider 207 for that service. The Facilitator 201 may but will not be limited to the use of the Internet 208 in certain circumstances as an alternative means for the viewing and responding to the interactive advertising method.” Nolan at [0091]. “The Advertiser 303 will compensate the Facilitator 301 based on the criteria requested.” Nolan at [0100]. “The Facilitator compiles the data, summarizes it and gives it to the Advertiser. 508. The Advertiser compensates the Facilitator according to a contractual agreement.” Nolan at [0107]. “The Facilitator would record their responses and the minutes viewed on software. The data would be summarized so the Facilitator could validate the order from the Advertiser who would compensate the Facilitator based on the results. 710. The Facilitator would continue to provide services to the Customer as long as they keep current on their monetary or interactive viewing obligation. 707.” Nolan at [0110]. “The Provider would receive and compile the data from the Customer using software supplied by the Facilitator. They would do this over dedicated television channels and Internet sites. 912. The Provider would collect the answers to information requests in the interactive messages along with the viewing time to be credited to the Customer. They would use the software supplied by the Facilitator. 913. The Provider would give the collected data in the form designed into the software by the Facilitator. 914.” Nolan at [0113]. “The Facilitator would give the data to the Advertiser to verify the viewership and the demographics requested. 915. The Advertiser compensated the Facilitator based on the contracted price for the contracted demographic population. 916. The Facilitator distributes the funds according to the profit model that they set up.” Nolan at [0113]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.

Claim Limitation	Exemplary Disclosure in the Prior Art
[10cii] wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message; and	Nolan expressly or inherently discloses “wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message.” For example: <i>See above at row [1biii].</i> To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10d] a third controller adapted to allot the received electric payment to the moving image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data.	Nolan expressly or inherently discloses “a third controller adapted to allot the received electric payment to the moving image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data.” For example: <i>See above at row [1c].</i> To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
12. The advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses by request thereof.	Nolan expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses by request thereof.” For example:

Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 1  Nolan at Fig. 1. Figure 8  Nolan at Fig. 8. “One new means for advertising over the Internet is to offer an incentive to the consumer to view the ad message. They are given a coupon that can be redeemed potentially for in-kind goods and services. A pay-per-view incentive offers a free access in return for several paid accesses.” Nolan at [0013]–[0014]. “This invention deviates from previous art in that it offers the same product with the intervention of a Facilitator 101 who acts as a middleman between the contracting parties meaning the Provider 102 and the Customer 104. It is noted that in accordance with FIG. 1 there is the addition of the Advertiser 103 to the diagram. The inclusion of the Advertiser 103 makes possible the opportunity for the Facilitator 101 to charge the Advertiser 103 for advertising commercials sent over some portion of the media.” Nolan at [0077].

Claim Limitation	Exemplary Disclosure in the Prior Art
	“The Customer 104 views the advertising and is given credit. The Facilitator 101 applies that credit to the cost of the media product that the Customer 104 chooses.” Nolan at [0077]. “The Provider 102 transmits the advertising content as designated by the Facilitator 101.” Nolan at [0079]. “The Advertiser 103 provides The Facilitator with the advertising that they want to run along with the interactive message that they want to deliver. The Advertiser 103 may elect to have the Facilitator 101 produce the advertising and interactive message” Nolan at [0080]. “The Provider 102 also delivers the advertising messages to the Customer 104.” Nolan at [0082]. “The Customer 204 will contract with the Facilitator 201 to provide selections of services from a menu. An embodiment would offer the basic services comprised of a Television Programming Provider 206 and an Internet Provider 207. The Customer 204 would agree to pay the Facilitator 201 in currency for the media product should they not meet the criteria of the interactive viewership.” Nolan at [0090]. “The Customer 204 would agree to watch a designated number of minutes of interactive advertising that will be based on the number of menu options that they select and the number of credits offered for watching a specific advertisement piece.” Nolan at [0090]. “The Facilitator 201 will give the Television Program Provider 206 the advertising messages to be run, the times that they will be run and the channels on which to run them.” Nolan at [0092]. “The diagram 300 reveals an embodiment that describes alternate Optional Service Providers 312, 313, 314 that are part of but not limited to a menu of services offered to the Customer 304. They are offered to the Customer 304 by the Facilitator 301 and paid for by the Advertiser 303 in exchange for watching a required amount of interactive advertising messages” Nolan at [0100]. “The Facilitator instructs the Television Programming Provider or the Internet Provider to run the Advertiser's message on a designated channel or web site.” Nolan at [0107]. “The Customer is instructed as to which channel or web site they are to tune in and view to receive credit toward the costs of their selected media package. The Customer should enter their PIN number or provide some other verification of their identity. The Customer would view the advertising message. 506. The customer responds to the interactive information request. If the information is correct, the Customer is notified as to the credit received. 507. The data is collected on software that the Facilitator has supplied to the Provider.” Nolan at [0107].

Claim Limitation	Exemplary Disclosure in the Prior Art
	Figure 12  <pre> graph TD 501[Start 501] --> 502[Facilitator contracts with advertiser 502] 502 --> 503[Facilitator delivers advertising to customer 503] 503 --> 504[Customer logs into advertising venue 504] 504 --> 505[Customer views advertising 505] 505 --> 506[Customer responds to information requests 506] 506 --> 507[Facilitator provides data to advertiser 507] 507 --> 508[Advertiser compensates Facilitator 508] 508 --> 509[End 509] </pre> Nolan at Fig.12. Figure 14  <pre> graph TD 710[Start 710] --> 702[Facilitator contracts for services and advertising delivery with providers 702] 702 --> 703[Provider delivers services and advertising to customer 703] 703 --> 704[Provider collects data from Customer 704] 704 --> 705[Provider provides data to Facilitator 705] 705 --> 706[Facilitator compensates Provider 706] 706 --> 707[End 707] </pre> Nolan at Fig. 14. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art

Claim Limitation	Exemplary Disclosure in the Prior Art
	identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
13. The advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses, the advertising image data of commercial message being related to a television program designated by the moving image viewing apparatus.	Nolan expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses, the advertising image data of commercial message being related to a television program designated by the moving image viewing apparatus.” To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art. In particular, Nolan teaches the general concept of delivering advertising image data of commercial messages to the plurality of moving image viewing apparatuses. <i>See</i> limitations 10.a-10.b.i. Although Nolan does not explicitly disclose the content of the commercial message, Nolan is not limited to a particular commercial message. A POSITA would have understood and found obvious that the advertising image data provided by advertising image data delivery system can be modified to include a commercial message related to the television program selected by the moving image viewing apparatus.
14. The advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses, the plurality of advertising image data of commercial messages including an advertisement of a television program.	Nolan expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses, the plurality of advertising image data of commercial messages including an advertisement of a television program.” To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art. In particular, Nolan teaches the general concept of delivering advertising image data of commercial messages to the plurality of moving image viewing apparatuses. <i>See</i> limitations 10.a-10.b.i. Although Nolan does not explicitly disclose the content of the commercial message, Nolan is not limited to a particular commercial message. A POSITA would have understood and found obvious that the

Claim Limitation	Exemplary Disclosure in the Prior Art
	advertising image data provided by advertising image data delivery system can be modified to include a commercial message that includes an advertisement of a television program.
15. The advertising image data delivery system according to claim 10, wherein the advertising image data delivery system is integrated into a system of the advertiser.	Nolan expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10, wherein the advertising image data delivery system is integrated into a system of the advertiser.” For example: “The Facilitator arranges with the Advertiser to supply a produced commercial message and the interactive information request that would be part of the body of the advertising message or a tag on the end. The Advertiser might elect to have the Facilitator produce and supply the commercial and interactive request. 909.” Nolan at [0113]. To the extent that Nolan does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the with the teachings of Ray, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.

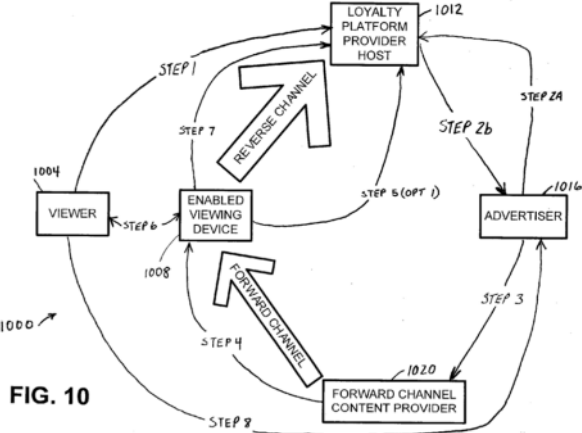
Ex. 391-B –Invalidity of U.S. Patent No. 8,677,391 in view of Ray¹

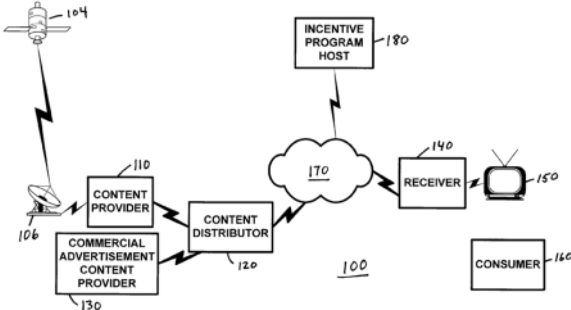
US20070288951A1 (“Ray”), is prior art to U.S. Patent No. 8,677,391 (“the ’391 patent”) under at least 35 U.S.C. §102(e) (pre-AIA). Ray was filed on April 28, 2006 and published on December 13, 2007.

Amazon’s invalidity contentions are based in part on Giken’s infringement contentions, to the extent Amazon can understand them, because that which infringes, if later, anticipates, if earlier. Amazon offers these contentions without prejudice to any position it may later take as to any claim construction issue. To the extent these contentions reflect claim interpretations implicit in Giken’s infringement contentions, no inference is intended, nor should any be drawn, that Amazon agrees with any claim interpretation implied by Giken’s infringement contentions, and Amazon reserves the right to contest such claim interpretations. Where Amazon cites to a particular figure, the citation encompasses the description of that figure; similarly, where Amazon cites to text describing a figure, the citation encompasses that figure as well.

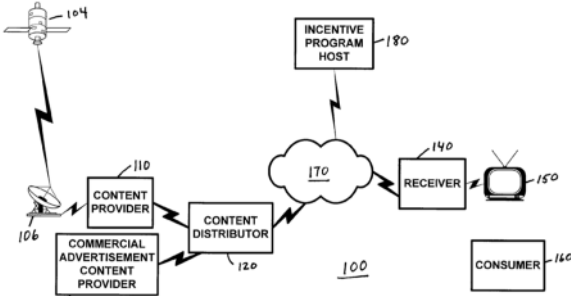
Claim Limitation	Exemplary Disclosure in the Prior Art
1[pre]. A moving image data delivery system capable of being in communication with a plurality of moving image viewing apparatuses and an advertising image data delivery system comprising:	To the extent the preamble is limiting, Ray expressly or inherently discloses “[a] moving image data delivery system capable of being in communication with a plurality of moving image viewing apparatuses and an advertising image data delivery system.” For example: FIG. 1 Ray at Fig. 1.

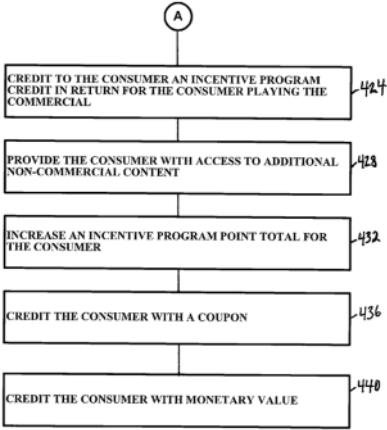
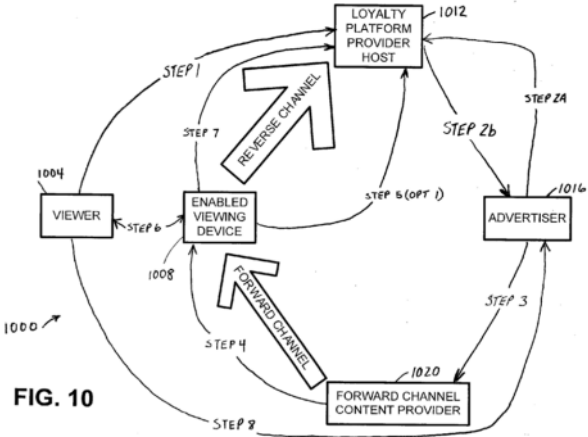
¹ This chart also applies to Ray combined with knowledge of a POSITA and combined with other references cited in this chart.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 FIG. 10 Ray at Fig. 10. “A content provider 110 provides non-commercial program content to a broadcaster 120.” Ray at [0025]. “The combined content can be broadcast to receivers operated by consumers, such as receiver 140 operated by consumer 160. If the content is audio-visual, the consumer can view the content on display 150. If the content is purely audio, the user can play the content on an audio player.” Ray at [0026]. “FIG. 1 also shows an incentive program host 180. Incentive program host can be coupled with any of the following: the advertiser 130, the consumer receiver 140, and/or the broadcaster 120.” Ray at [0028]. “This application claims the benefit under 35 USC 119(e) of U.S. Patent Application No. 60/745,998, filed Apr. 28, 2006, ‘Incentives for Viewing Advertisements’, which is hereby incorporated by reference, as if set forth in full in this document, for all purposes.” Ray at [0001]. “The following explanations concern term usage according to some embodiments of the present invention - ‘Enabled Video Broadcast Viewing Device’ (or just ‘Viewing Device’) — a device capable of directly (TV) or indirectly (set-top box) displaying broadcast video signal. This includes live-only devices such as Television Set or Cable Box or time-shifted viewing device such as a PVR or on-demand set-top box. The ‘viewing device’ in this context has a ‘forward’ and ‘backward’ communication channels as defined below

Claim Limitation	Exemplary Disclosure in the Prior Art
	- ‘Forward channel’ — means of delivering video data to the viewing device. This includes but not limited to aerial TV broadcast, cable and satellite TV feeds, as well as on demand video streaming and over-the-internet content delivery — ‘Reverse channel’ — means of communication between viewing device and the back office, including a path to loyalty program provider host. This is typically done by connecting viewing device to broadband Internet, but may be done via other means such as two-way cable transmissions, etc.” Ray Provisional Application No. 60/745,998 (Ray Prov.) at 5. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1a] a storage of a plurality of digital moving image data of television programs to be viewed by the moving image viewing apparatuses;	Ray expressly or inherently discloses “a storage of a plurality of digital moving image data of television programs to be viewed by the moving image viewing apparatuses.” For example:  FIG. 1 Ray at Fig. 1.

Claim Limitation	Exemplary Disclosure in the Prior Art
	FIG. 10 Ray at Fig. 10. “A content provider 110 provides non-commercial program content to a broadcaster 120.” Ray at [0025]. “In block 308, program content is transmitted to a content receiver.” Ray at [0032]. “The program content can be comprised of non-commercial content (i.e., content not primarily for purposes of advertising, such as a sporting event or movie) and a commercial (e.g., a pet food commercial).” Ray at [0032]. “A ‘forward channel’ shall mean a delivery mechanism for delivering video data to a viewing device. This includes but is not limited to aerial television broadcast, cable and satellite television feeds, as well as on-demand video streaming of content over a network such as the internet.” Ray at [0049]. “A ‘forward channel content provider’ shall mean a provider of content for forward-channel, such as a TV network or local TV channel, or cable operator.” Ray at [0049]. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.

Claim Limitation	Exemplary Disclosure in the Prior Art
[1bi] a first controller adapted to electrically provide one of the digital moving image data of television programs to one of the moving image viewing apparatuses for allowing to display the television program in exchange of a presentation of an electric data denoting a right of viewing the television program,	Ray expressly or inherently discloses “a first controller adapted to electrically provide one of the digital moving image data of television programs to one of the moving image viewing apparatuses for allowing to display the television program in exchange of a presentation of an electric data denoting a right of viewing the television program.” For example:  FIG. 1 Ray at Fig. 1.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 FIG. 4B Ray at Fig. 4B.  FIG. 10 Ray at Fig. 10.

Claim Limitation	Exemplary Disclosure in the Prior Art
	“The present embodiment of the invention therefore can be beneficial in that it incites (i.e., provides incentive) to a consumer to play a commercial.” Ray at [0024]. “Furthermore, the receiver can also operate as a transmitter so as to send return signals in some instances to another part of the incentive system. For example, such transmission could be used to indicate that the consumer has watched a commercial.” Ray at [0027]. “The incentive program host can also perform redemption of incentive credits.” Ray at [0028]. “The system of FIG. 1 allows a consumer to register with the incentive program for purposes of receiving some form of value in return for playing a stored commercial. For example, when a consumer records a sporting event on his/her personal video recorder, that recorded sporting event can typically be played back without having to watch the commercials. However, the incentive program system shown in FIG. 1 would provide the consumer with some form of value when the consumer actually does watch the recorded commercials. The length of time spent viewing the commercials or the number of commercials played, for example, can then be reported back by the consumer's receiver 140 to the incentive program host 180. Under predetermined incentive program rules, the incentive program host can then credit the consumer's incentive program account with a corresponding value. For example, the incentive program might provide a consumer's account with a point for every commercial that is viewed. As another example, the incentive program might provide the consumer's account with 3 minutes worth of time toward a predetermined number of minutes required to receive a reward. In such an example, a consumer might be required to view 30 minutes of commercials before being eligible for a reward.” Ray at [0029]. “Upon playback of the program content, a determination can be made as to whether the consumer actually played the commercial, as shown in block 312. For example, this can be implemented by using software stored on a personal video recorder to determine whether the consumer played an identified commercial or skipped over the identified commercial. Similarly, the consumer can be presented with an option of viewing an identified commercial by the personal video recorder. If the user selects not to view the presented commercial, then the PVR can report that that commercial was not played. However, when a consumer does play a commercial, then the consumer's account can be credited with an incentive program credit, as shown by block 316.” Ray at [0033]. “This effectively provides some type of value to the consumer for playing the commercial. It should be noted that even credit towards a reward threshold is understood to be of value to a consumer.” Ray at [0033].

Claim Limitation	Exemplary Disclosure in the Prior Art
	“[A] consumer is registered as part of an incentive program in accordance with block 404. The incentive program is configured to provide an incentive to a consumer to play an advertisement, such as a television commercial or a radio advertisement.” Ray at [0034]. “[T]he consumer can then be credited with some type of credit in return for the consumer playing a commercial. For example, block 428 shows that the consumer could be provided with access to additional non-commercial content—for example, extra footage from the making of a movie that the consumer is currently viewing. Or, the consumer's incentive account could be credited with a predetermined number of points that are awarded for watching a television commercial, as shown by block 432. As another example, the consumer could be provided with a coupon, as shown by block 436. Or, the consumer could be credited with monetary value, such as cash in a cash account or credit redeemable from an incentive account or a discount applicable to a consumer's cable television account.” Ray at [0034]. “A determination can then be made as to whether the consumer played the commercial, as shown by block 628. If played, the consumer can earn incentive program credit in accordance with the incentive program rules and conditions, as shown by block 632.” Ray at [0038]. “In block 904, a consumer registers in an incentive program that is configured to provide incentive to a consumer to play advertisements, such as viewing commercials stored on a personal video recorder. In block 908, the consumer is credited with an incentive program credit in response tot the consumer playing an advertisement. In block 912, the consumer may redeem the incentive credit that has been earned. Redemption of incentive program credit may be accomplished in a number of ways. For example, redemption may be accomplished by providing the consumer with additional program content, as illustrated by block 916. As an example of this, a consumer watching a movie could redeem incentive program credit to obtain transmission of behind-the-scenes content that is often distributed with DVD's when movies are released as DVD's. Or, a consumer watching a sporting event could redeem the incentive program credits to obtain continued broadcast coverage of highlights or interviews from the event. As another redemption option, block 920 shows that a consumer can be provided with a coupon. Such a coupon could be provided to a consumer for watching a commercial or for watching a number of commercials or for watching a number of commercial minutes, as detailed by the incentive program rules and conditions.” Ray at [0047]. “A ‘forward channel’ shall mean a delivery mechanism for delivering video data to a viewing device. This includes but is not limited to aerial television broadcast, cable and satellite television feeds, as well as on-demand video streaming of content over a network such as the internet.” Ray at [0049].

Claim Limitation	Exemplary Disclosure in the Prior Art
	To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1bii] the electric data having been issued to the moving image viewing apparatus, without intermediary of the moving image data delivery system, by the advertising image data delivery system in exchange of a commercial message view by the moving image viewing apparatus, provided by the advertising image data delivery system,	Ray expressly or inherently discloses “the electric data having been issued to the moving image viewing apparatus, without intermediary of the moving image data delivery system, by the advertising image data delivery system in exchange of a commercial message view by the moving image viewing apparatus, provided by the advertising image data delivery system.” For example: “[A] system is utilized that provides incentive to a consumer to view advertisements such as television commercials.” Ray at [0024]. “The present embodiment of the invention therefore can be beneficial in that it incites (i.e., provides incentive) to a consumer to play a commercial.” Ray at [0024]. “[T]he broadcaster can obtain commercial content from an advertiser 130.” Ray at [0025]. “The broadcaster combines the non-commercial program content with the commercial content such that the commercials are intermittently inserted within the non-commercial program content” Ray at [0025]. “The combined content can be broadcast to receivers operated by consumers, such as receiver 140 operated by consumer 160. If the content is audio-visual, the consumer can view the content on display 150. If the content is purely audio, the user can play the content on an audio player.” Ray at [0026]. “Furthermore, the receiver can also operate as a transmitter so as to send return signals in some instances to another part of the incentive system. For example, such transmission could be used to indicate that the consumer has watched a commercial.” Ray at [0027]. “[T]he incentive program host can register the consumer as a participant in the incentive program. The incentive program host can also obtain feedback from the consumer as to how the consumer felt about a particular advertisement or whether the consumer actually played a commercial advertisement.” Ray at [0028]. “The incentive program host can also perform redemption of incentive credits.” Ray at [0028].

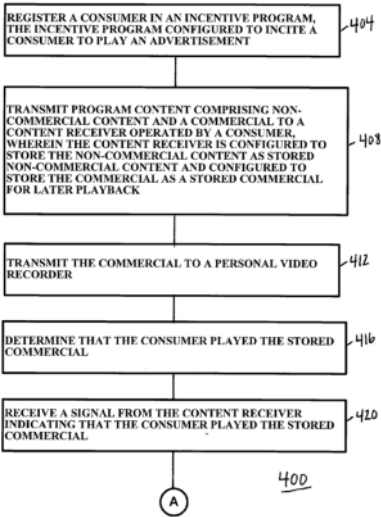
Claim Limitation	Exemplary Disclosure in the Prior Art
	“The system of FIG. 1 allows a consumer to register with the incentive program for purposes of receiving some form of value in return for playing a stored commercial. For example, when a consumer records a sporting event on his/her personal video recorder, that recorded sporting event can typically be played back without having to watch the commercials. However, the incentive program system shown in FIG. 1 would provide the consumer with some form of value when the consumer actually does watch the recorded commercials. The length of time spent viewing the commercials or the number of commercials played, for example, can then be reported back by the consumer's receiver 140 to the incentive program host 180. Under predetermined incentive program rules, the incentive program host can then credit the consumer's incentive program account with a corresponding value. For example, the incentive program might provide a consumer's account with a point for every commercial that is viewed. As another example, the incentive program might provide the consumer's account with 3 minutes worth of time toward a predetermined number of minutes required to receive a reward. In such an example, a consumer might be required to view 30 minutes of commercials before being eligible for a reward.” Ray at [0029]. “[A] consumer registers with an incentive program. More specifically, the consumer registers with an incentive program that is configured to reward the consumer for playing commercial advertisements, such as viewing television ads, or listening to radio ads, etc.” Ray at [0032]. “The program content can be comprised of non-commercial content (i.e., content not primarily for purposes of advertising, such as a sporting event or movie) and a commercial (e.g., a pet food commercial).” Ray at [0032]. “Upon playback of the program content, a determination can be made as to whether the consumer actually played the commercial, as shown in block 312. For example, this can be implemented by using software stored on a personal video recorder to determine whether the consumer played an identified commercial or skipped over the identified commercial. Similarly, the consumer can be presented with an option of viewing an identified commercial by the personal video recorder. If the user selects not to view the presented commercial, then the PVR can report that that commercial was not played. However, when a consumer does play a commercial, then the consumer's account can be credited with an incentive program credit, as shown by block 316.” Ray at [0033]. “This effectively provides some type of value to the consumer for playing the commercial. It should be noted that even credit towards a reward threshold is understood to be of value to a consumer.” Ray at [0033].

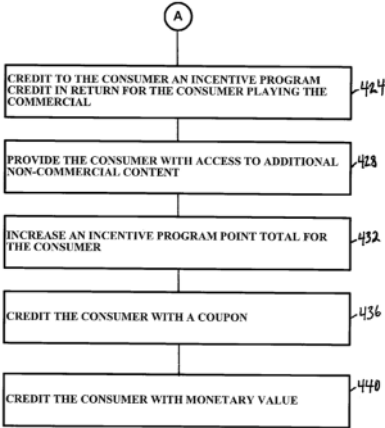
Claim Limitation	Exemplary Disclosure in the Prior Art
	“[A] consumer is registered as part of an incentive program in accordance with block 404. The incentive program is configured to provide an incentive to a consumer to play an advertisement, such as a television commercial or a radio advertisement.” Ray at [0034]. “[P]rogram content is transmitted to a content receiver. The program content is comprised of non-commercial content as well as at least one commercial.” Ray at [0034]. “[T]he commercial (and non-commercial) content can be transmitted to a personal video recorder.” Ray at [0034]. “The consumer watching the commercial content can then be prompted as to whether he or she wants to view a commercial and receive credit under the incentive program. If the consumer chooses to play the commercial, the personal video recorder can make a record of that event for reporting to the incentive program. If the consumer does not choose to play the program, then the non-commercial content can continue to be played. This is illustrated by block 416. In block 420, the content receiver, e.g., the PVR, can report the consumer's behavior to the incentive program host.” Ray at [0034]. “[T]he consumer can then be credited with some type of credit in return for the consumer playing a commercial. For example, block 428 shows that the consumer could be provided with access to additional non-commercial content—for example, extra footage from the making of a movie that the consumer is currently viewing. Or, the consumer's incentive account could be credited with a predetermined number of points that are awarded for watching a television commercial, as shown by block 432. As another example, the consumer could be provided with a coupon, as shown by block 436. Or, the consumer could be credited with monetary value, such as cash in a cash account or credit redeemable from an incentive account or a discount applicable to a consumer's cable television account.” Ray at [0034]. “In preparing content for broadcast to the consumer, a broadcaster or other entity can use the consumer's profile to select commercials to transmit to the consumer. For example, in preparing a transmission to a consumer that is willing to watch pet food and soup commercials, the broadcaster can transmit pet food and soup commercials to that consumer. Thus, a match is made between an available commercial for broadcast and a selected category in the consumer's profile, as indicated by block 620. In block 624, the selected commercial can then be incorporated in a transmission of program content to the consumer.” Ray at [0038]. “A determination can then be made as to whether the consumer played the commercial, as shown by block 628. If played, the consumer can earn incentive program credit in accordance with the incentive program rules and conditions, as shown by block 632.” Ray at [0038].

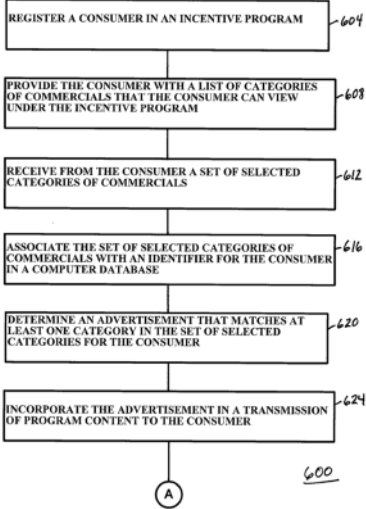
Claim Limitation	Exemplary Disclosure in the Prior Art
	“An advertiser provides a commercial with meta-information about a subject, target demographic and rules in regard to usage of points. The primary content provider creates content with designated commercial breaks. The primary content provider sets price in ‘points per second’ for commercial space in the content. A commercial is delivered to the viewing device of the consumer and stored. This could be accomplished in-line with program content or ahead of time. It could also be accomplished over a network or dedicated/leased programming channel. The commercial can be stored with meta-information for later playback at the consumer's receiver. Primary content is delivered to the viewing device with meta-information about the type of programming and available spots as well as price per second in points of various timeslots. The viewing device decides which commercials to show based on viewer profile combined with available commercial meta-information.” Ray at [0042]. “[P]rogram content that is comprised of non-commercial content and commercial content is transmitted to a consumer. The content is received at a receiver operated by the consumer. The receiver stores the content for later playback.” Ray at [0043]. “During playback, the consumer can be queried as to whether the consumer wants to play the stored commercial, as shown by block 708. In block 712, a determination is made as to whether the consumer selects playback of the stored commercial. For example, the consumer can select playback via selection of an icon displayed as a graphical user interface on a display screen. As one example shown by block 716, a personal video recorder can be configured to prompt the consumer when a commercial is encountered during playback of stored content and then to cause playback of the commercial if the consumer indicates that he or she wants to watch the commercial, as indicated by block 720. In block 724, a determination can be made that the consumer has played the commercial.” Ray at [0043]. “[B]lock 728 shows that a consumer can be credited with incentive program credit for having played a commercial.” Ray at [0043]. “In block 904, a consumer registers in an incentive program that is configured to provide incentive to a consumer to play advertisements, such as viewing commercials stored on a personal video recorder. In block 908, the consumer is credited with an incentive program credit in response tot the consumer playing an advertisement. In block 912, the consumer may redeem the incentive credit that has been earned. Redemption of incentive program credit may be accomplished in a number of ways. For example, redemption may be accomplished by providing the consumer with additional program content, as illustrated by block 916. As an example of this, a consumer watching a movie could redeem incentive program credit to obtain transmission of behind-the-scenes content that is often distributed with DVD's when movies are released as DVD's. Or, a

Claim Limitation	Exemplary Disclosure in the Prior Art
	consumer watching a sporting event could redeem the incentive program credits to obtain continued broadcast coverage of highlights or interviews from the event. As another redemption option, block 920 shows that a consumer can be provided with a coupon. Such a coupon could be provided to a consumer for watching a commercial or for watching a number of commercials or for watching a number of commercial minutes, as detailed by the incentive program rules and conditions.” Ray at [0047]. “A ‘forward channel’ shall mean a delivery mechanism for delivering video data to a viewing device. This includes but is not limited to aerial television broadcast, cable and satellite television feeds, as well as on-demand video streaming of content over a network such as the internet.” Ray at [0049]. “According to various embodiments of the present invention, incentives are offered to viewers for watching advertisements, and reports are generated concerning advertisement effectiveness.” Ray Prov. at 1. “Various embodiments of the present invention allow advertisers to provide incentives to the viewer such as loyalty points and/or discounts based on the commercials they view or listen to via PVRs or audio devices such as podcasts. This solution provides viewers with a way to select which commercials they wish to view and provides benefits to the viewers for doing so.” Ray Prov. at 1. “Incentive — Depending on the advertisement and length of commercial, the advertiser provides incentives to the viewer in terms of loyalty program points or product discounts. Additionally, the viewer can provide the advertiser feedback on the ad and their perception of the product or service being offered for additional incentives.” Ray Prov. at 3.

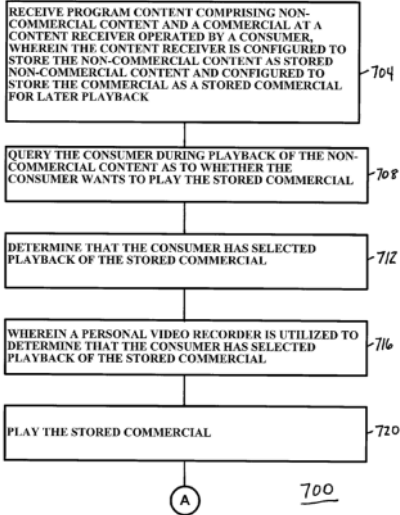
Claim Limitation	Exemplary Disclosure in the Prior Art
	FIG. 1 Ray at Fig. 1. FIG. 3 Ray at Fig. 3.

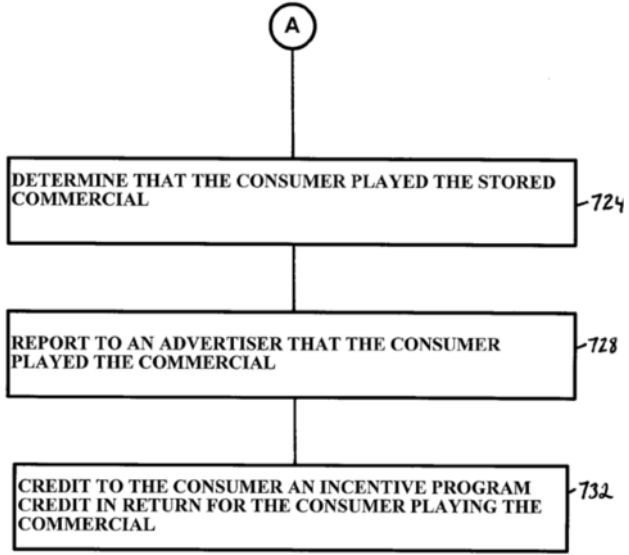
Claim Limitation	Exemplary Disclosure in the Prior Art
	 <pre> graph TD 404[REGISTER A CONSUMER IN AN INCENTIVE PROGRAM, THE INCENTIVE PROGRAM CONFIGURED TO INCITE A CONSUMER TO PLAY AN ADVERTISEMENT] --> 408[TRANSMIT PROGRAM CONTENT COMPRISING NON-COMMERCIAL CONTENT AND A COMMERCIAL TO A CONTENT RECEIVER OPERATED BY A CONSUMER, WHEREIN THE CONTENT RECEIVER IS CONFIGURED TO STORE THE NON-COMMERCIAL CONTENT AS STORED NON-COMMERCIAL CONTENT AND CONFIGURED TO STORE THE COMMERCIAL AS A STORED COMMERCIAL FOR LATER PLAYBACK] 408 --> 412[TRANSMIT THE COMMERCIAL TO A PERSONAL VIDEO RECORDER] 412 --> 416[DETERMINE THAT THE CONSUMER PLAYED THE STORED COMMERCIAL] 416 --> 420[RECEIVE A SIGNAL FROM THE CONTENT RECEIVER INDICATING THAT THE CONSUMER PLAYED THE STORED COMMERCIAL] 420 --> A((A)) </pre> FIG. 4A Ray at Fig. 4A.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 <pre> graph TD A((A)) --> 424[CREDIT TO THE CONSUMER AN INCENTIVE PROGRAM CREDIT IN RETURN FOR THE CONSUMER PLAYING THE COMMERCIAL] 424 --> 428[PROVIDE THE CONSUMER WITH ACCESS TO ADDITIONAL NON-COMMERCIAL CONTENT] 428 --> 432[INCREASE AN INCENTIVE PROGRAM POINT TOTAL FOR THE CONSUMER] 432 --> 436[CREDIT THE CONSUMER WITH A COUPON] 436 --> 440[CREDIT THE CONSUMER WITH MONETARY VALUE] </pre> FIG. 4B Ray at Fig. 4B.

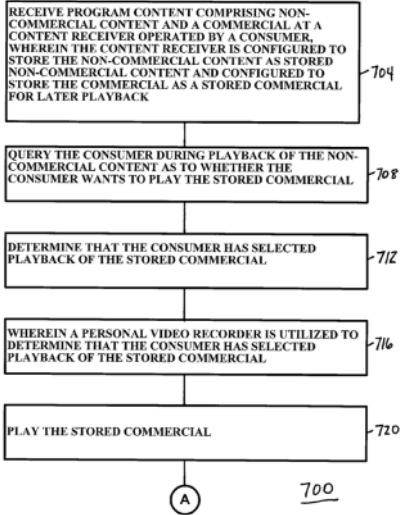
Claim Limitation	Exemplary Disclosure in the Prior Art
	 <pre> graph TD 604[REGISTER A CONSUMER IN AN INCENTIVE PROGRAM] --> 608[PROVIDE THE CONSUMER WITH A LIST OF CATEGORIES OF COMMERCIALS THAT THE CONSUMER CAN VIEW UNDER THE INCENTIVE PROGRAM] 608 --> 612[RECEIVE FROM THE CONSUMER A SET OF SELECTED CATEGORIES OF COMMERCIALS] 612 --> 616[ASSOCIATE THE SET OF SELECTED CATEGORIES OF COMMERCIALS WITH AN IDENTIFIER FOR THE CONSUMER IN A COMPUTER DATABASE] 616 --> 620[DETERMINE AN ADVERTISEMENT THAT MATCHES AT LEAST ONE CATEGORY IN THE SET OF SELECTED CATEGORIES FOR THE CONSUMER] 620 --> 624[INCORPORATE THE ADVERTISEMENT IN A TRANSMISSION OF PROGRAM CONTENT TO THE CONSUMER] 624 --> 600((A)) </pre> FIG. 6A Ray at Fig. 6A.

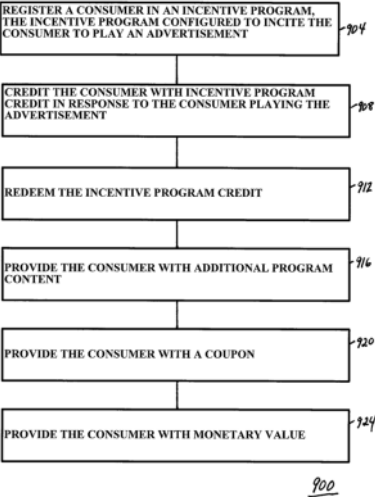
Claim Limitation	Exemplary Disclosure in the Prior Art
	<pre> graph TD A((A)) --> 628[DETERMINE WHETHER THE CONSUMER PLAYED THE ADVERTISEMENT] 628 --> 632[CREDIT THE CONSUMER WITH INCENTIVE CREDIT IN RETURN FOR THE CONSUMER PLAYING THE ADVERTISEMENT] 632 --> 636[OBTAIN DEMOGRAPHIC DATA OF THE CONSUMER;] 636 --> 640[REPORT THE DEMOGRAPHIC DATA OF THE CONSUMER TO AN ADVERTISER ASSOCIATED WITH THE ADVERTISEMENT] </pre> FIG. 6B Ray at Fig. 6B.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 <pre> graph TD 704[RECEIVE PROGRAM CONTENT COMPRISING NON-COMMERCIAL CONTENT AND A COMMERCIAL AT A CONTENT RECEIVER OPERATED BY A CONSUMER, WHEREIN THE CONTENT RECEIVER IS CONFIGURED TO STORE THE NON-COMMERCIAL CONTENT AS STORED NON-COMMERCIAL CONTENT AND CONFIGURED TO STORE THE COMMERCIAL AS A STORED COMMERCIAL FOR LATER PLAYBACK] --> 708[QUERY THE CONSUMER DURING PLAYBACK OF THE NON-COMMERCIAL CONTENT AS TO WHETHER THE CONSUMER WANTS TO PLAY THE STORED COMMERCIAL] 708 --> 712[DETERMINE THAT THE CONSUMER HAS SELECTED PLAYBACK OF THE STORED COMMERCIAL] 712 --> 716[WHEREIN A PERSONAL VIDEO RECORDER IS UTILIZED TO DETERMINE THAT THE CONSUMER HAS SELECTED PLAYBACK OF THE STORED COMMERCIAL] 716 --> 720[PLAY THE STORED COMMERCIAL] 720 --> A((A)) </pre> FIG. 7A Ray at Fig. 7A.

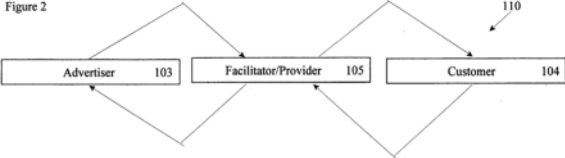
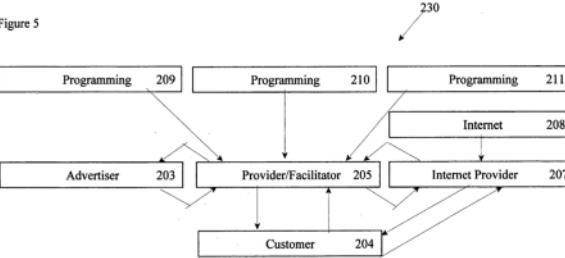
Claim Limitation	Exemplary Disclosure in the Prior Art
	 <pre> graph TD A((A)) --> 724[DETERMINE THAT THE CONSUMER PLAYED THE STORED COMMERCIAL 724] 724 --> 728[REPORT TO AN ADVERTISER THAT THE CONSUMER PLAYED THE COMMERCIAL 728] 728 --> 732[CREDIT TO THE CONSUMER AN INCENTIVE PROGRAM CREDIT IN RETURN FOR THE CONSUMER PLAYING THE COMMERCIAL 732] </pre> Ray at Fig. 7B.

Claim Limitation	Exemplary Disclosure in the Prior Art
	<pre> graph TD 904[REGISTER A CONSUMER IN AN INCENTIVE PROGRAM, THE INCENTIVE PROGRAM CONFIGURED TO INCITE THE CONSUMER TO PLAY AN ADVERTISEMENT] --> 908[CREDIT THE CONSUMER WITH INCENTIVE PROGRAM CREDIT IN RESPONSE TO THE CONSUMER PLAYING THE ADVERTISEMENT] 908 --> 912[REDEEM THE INCENTIVE PROGRAM CREDIT] 912 --> 916[PROVIDE THE CONSUMER WITH ADDITIONAL PROGRAM CONTENT] 916 --> 920[PROVIDE THE CONSUMER WITH A COUPON] 920 --> 924[PROVIDE THE CONSUMER WITH MONETARY VALUE] </pre> 900 FIG. 9 Ray at Fig. 9. <pre> graph TD 1004[VIEWER] -- STEP 1 --> 1012[LOYALTY PLATFORM PROVIDER HOST] 1012 -- STEP 2a --> 1016[ADVERTISER] 1016 -- STEP 3 --> 1020[FORWARD CHANNEL CONTENT PROVIDER] 1020 -- STEP 4 --> 1008[ENABLED VIEWING DEVICE] 1008 -- STEP 6 --> 1004 1008 -- STEP 7 --> 1012 1012 -- STEP 5 (OPT 1) --> 1016 1016 -- STEP 2b --> 1012 1020 -- STEP 9 --> 1004 subgraph Channels direction LR FC[FORWARD CHANNEL] RC[REVERSE CHANNEL] end </pre> 1000 FIG. 10 Ray at Fig. 10.

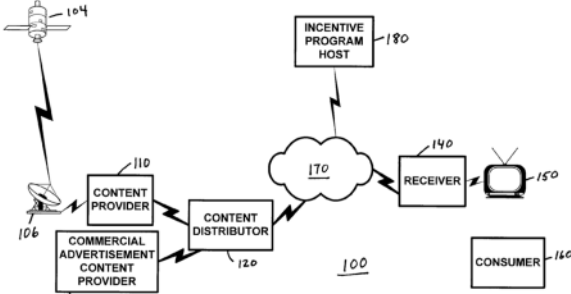
Claim Limitation	Exemplary Disclosure in the Prior Art
	To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1biii] wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message; and	Ray expressly or inherently discloses “wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message.” For example: “The advertiser can choose their level of comitment[sic] during a show by paying into a tiered advertising, based on how they want their commercials[sic] to count. The broadcaster can charge a flat fee for regular commercials[sic], or pay by views where the broadcaster encourage views by double points etc.” Ray Prov. at 16.  <pre> graph TD 704[RECEIVE PROGRAM CONTENT COMPRISING NON-COMMERCIAL CONTENT AND A COMMERCIAL AT A CONTENT RECEIVER OPERATED BY A CONSUMER, WHEREIN THE CONTENT RECEIVER IS CONFIGURED TO STORE THE NON-COMMERCIAL CONTENT AS STORED NON-COMMERCIAL CONTENT AND CONFIGURED TO STORE THE COMMERCIAL AS A STORED COMMERCIAL FOR LATER PLAYBACK] --> 708[QUERY THE CONSUMER DURING PLAYBACK OF THE NON-COMMERCIAL CONTENT AS TO WHETHER THE CONSUMER WANTS TO PLAY THE STORED COMMERCIAL] 708 --> 712[DETERMINE THAT THE CONSUMER HAS SELECTED PLAYBACK OF THE STORED COMMERCIAL] 712 --> 716[WHEREIN A PERSONAL VIDEO RECORDER IS UTILIZED TO DETERMINE THAT THE CONSUMER HAS SELECTED PLAYBACK OF THE STORED COMMERCIAL] 716 --> 720[PLAY THE STORED COMMERCIAL] 720 --> A((A)) style A fill:none,stroke:none </pre> FIG. 7A Ray at Fig. 7A.

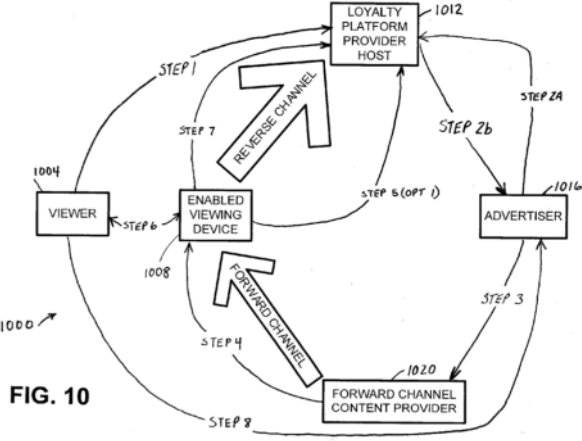
Claim Limitation	Exemplary Disclosure in the Prior Art
	 FIG. 9 Ray at Fig. 9. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[1c] a second controller adapted to receive an electric payment from the advertising image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image	Ray expressly or inherently discloses “a second controller adapted to receive an electric payment from the advertising image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data.” For example: “Use of a profile of commercials that a consumer is willing to view is useful in that it provides useful demographic data about the consumer. For example, by obtaining the consumer's date of birth, sex, and income level, the incentive program can provide advertisers with useful demographic data about consumers, as indicated by block 636. Thus, this demographic data can be reported to various advertisers, as shown by block 640. Furthermore, it can also allow the incentive program to tabulate how many people watched a

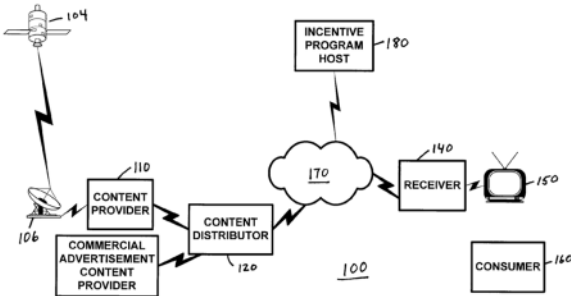
Claim Limitation	Exemplary Disclosure in the Prior Art
data delivery system is presented with the electric data.	particular commercial or category of commercial. Thus, it would provide to a broadcaster useful data in determining how much to charge advertisers for certain types of commercials. For example, if the incentive program data showed that beverage commercials are more popular with consumers than household cleaning product commercials, a broadcaster could charge an advertising company more for transmitting the beverage commercial because the audience viewing that type of commercial would be known to be larger and thus of greater benefit to the advertiser.” Ray at [0040]. “[B]lock 728 indicates that a report can be made to an advertiser that a consumer (or a group of consumers) watched an advertisement. This can be valuable information to broadcasters, advertisers and others in that it indicates products or categories of commercials for which consumers are willing to view commercials.” Ray at [0043]. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
9. The moving image data delivery system according to claim 1, wherein the advertising image data delivery system is integrated into the moving image data delivery system.	Ray expressly or inherently discloses “[t]he moving image data delivery system according to claim 1, wherein the advertising image data delivery system is integrated into the moving image data delivery system.” For example: To the extent Ray does not disclose any part of this limitation, Ray renders this limitation obvious. It would have been obvious to a person of ordinary skill in the art to practice this limitation in light of Hisamune combined with the knowledge of a person of ordinary skill in the art, and in light of Hisamune combined with any of the other prior art references identified in the contentions for this patent, including Hisamune. The manner in which each of these references discloses and/or renders obvious this limitation is set forth in these contentions. All of these disclosures also would have been within the knowledge of a person of ordinary skill in the art. Moreover, it would have been obvious to a person of ordinary skill in the art to combine Ray with the following prior art:

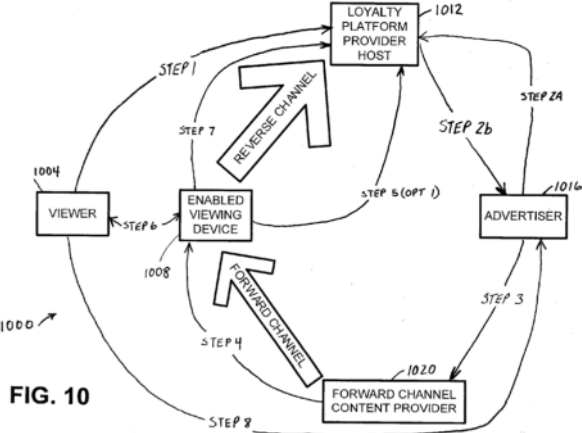
Claim Limitation	Exemplary Disclosure in the Prior Art
	Nolan (US20060053049A1) expressly or inherently discloses “[t]he moving image data delivery system according to claim 1, wherein the advertising image data delivery system is integrated into the moving image data delivery system.” For example: Figure 2  U.S. Pat. App. Pub. No. 2006/0053049 (“Nolan”) at Fig. 2. “The Facilitator/Provider is the inventor and/or an authorized agent in an alternate embodiment of the invention where the Facilitator Provider performs a dual role of the Facilitator and either the Television Programming Provider or the Internet Provider or both.” Nolan at [0087]. Figure 5  Nolan at Fig. 5. “6. Dual Roles for the Facilitator FIG. 5 is a schematic block diagram 230 that illustrates an approach for setting up an enterprise that contracts to offer media to customer according to an alternate embodiment described herein. The diagram 230 reveals an embodiment where the Facilitator 201 would perform the role as described herein but would also perform the role of Television Programming Provider 210 and/or the Internet Provider 207. The Facilitator 201 would become the Facilitator/Provider 205. (205>209, 210, 211) The Facilitator/Provider 205 would pursue

Claim Limitation	Exemplary Disclosure in the Prior Art
	contractual arrangements to secure access to the Programming 209, 210, 211 and/or the Internet 208 without limit as to the method of delivery. In an embodiment, (205>203) the Facilitator/Provider 205 would offer a population of potential Customer 204 to the Advertiser 203 at a market price determined by the number and demographics of the Customer 204 profile that the Advertiser 203 wishes to reach. The Facilitator/Provider 205 captures information as to which Customers 204 were successfully reached, the results of the interactive communication and any other aspect of the received data. (203>205) The Facilitator/Provider 205 receives an order from the Advertiser 203 based on the number of Customers 204 that they wish to reach and the demographic specifications they want to target. The Advertiser 203 supplies the Facilitator/Provider 205 with the advertising content that the Advertiser 203 wants to run along with the interactive message that they want to deliver. The Advertiser 203 may elect to have the Facilitator/Provider 205 to produce the commercial content and/or the interactive message. The Advertiser 203 will pay the Facilitator/Provider 205 for the achieved results based on the contracted price. In another feature of an embodiment, (205>204) the Facilitator/Provider 205 would solicit for Customers 204 who wish to engage a service that will provide them with a variety of media products and services potentially at no charge to them provided that they meet an interactive viewership requirement. The Facilitator/Provider 205 would collect demographic data in order to make a profile to give to the Advertiser 203. (204>205) The Customer 204 will contract with the Facilitator/Provider 205 to supply a selection of services from a menu. In an embodiment, the basic services would include, but not be limited to, the Programming 209, 210, 211 and the Internet 208. The Customer 204 would agree to pay a market price in currency for the product should they not meet the criteria of interactive viewership. The Customer 204 would agree to watch a designated number of minutes of interactive advertising that would be based on the number of menu options that they select. The Customer 204 will answer the interactive questions or provide other information requested. The Customer 204 would give the required demographic information to the Facilitator/Provider 205 that is deemed necessary to form a demographic profile to give to the Advertiser 203 as part of a general population of potential commercial targets. Furthermore in an embodiment, (208>205) The Facilitator/Provider 205 would package and present to the Customer 204 access and a format for receiving the Worldwide Web through an Internet 208 system. (209, 210, 211>205) The Facilitator/Provider 205 would contract with the various entities that produce and/or schedule television programs. The Programming 209, 210, 211 would be packaged in the same form as it is with the Television Programming Provider 206 and offered to the Customer 204 by the Facilitator/Provider 205.” Nolan at [0093]–[0097].

Claim Limitation	Exemplary Disclosure in the Prior Art
	To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
10[pre]. An advertising image data delivery system capable of being in communication with a plurality of moving image viewing apparatuses, a moving image data delivery system and an advertiser paying for the commercial message comprising:	To the extent the preamble is limiting, Ray expressly or inherently discloses “[a]n advertising image data delivery system capable of being in communication with a plurality of moving image viewing apparatuses, a moving image data delivery system and an advertiser paying for the commercial message.” For example:  FIG. 1 Ray at Fig. 1.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 FIG. 10 Ray at Fig. 10. “[A] system is utilized that provides incentive to a consumer to view advertisements such as television commercials” Ray at [0024]. “FIG. 1 also shows an incentive program host 180. Incentive program host can be coupled with any of the following: the advertiser 130, the consumer receiver 140, and/or the broadcaster 120.” Ray at [0028]. “[T]he incentive program host can register the consumer as a participant in the incentive program. The incentive program host can also obtain feedback from the consumer as to how the consumer felt about a particular advertisement or whether the consumer actually played a commercial advertisement.” Ray at [0028]. “[A] consumer registers with an incentive program. More specifically, the consumer registers with an incentive program that is configured to reward the consumer for playing commercial advertisements, such as viewing television ads, or listening to radio ads, etc.” Ray at [0032]. “[T]he commercial (and non-commercial) content can be transmitted to a personal video recorder.” Ray at [0034]. “The consumer watching the commercial content can then be prompted as to whether he or she wants to view a commercial and receive credit under the incentive program. If the consumer chooses to play the commercial, the personal video recorder can make a record of that event for reporting to the incentive

Claim Limitation	Exemplary Disclosure in the Prior Art
	program. If the consumer does not choose to play the program, then the non-commercial content can continue to be played. This is illustrated by block 416. In block 420, the content receiver, e.g., the PVR, can report the consumer's behavior to the incentive program host.” Ray at [0034]. “[A]he PVR can be coupled with a network such as the internet to transmit a message to the incentive program host.” Ray at [0034]. “A ‘loyalty program provider host’ shall mean a central clearinghouse for creating, processing, and/or redeeming loyalty programs.” Ray at [0049]. “An ‘advertiser’ shall mean a distributor of a commercial advertisement that is delivered to a viewer.” Ray at [0049]. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10a] a storage of a plurality of advertising image data of commercial messages to be viewed by the moving image viewing apparatuses;	Ray expressly or inherently discloses “a storage of a plurality of advertising image data of commercial messages to be viewed by the moving image viewing apparatuses.” For example:  FIG. 1 Ray at Fig. 1.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 FIG. 10 Ray at Fig. 10. “The program content can be comprised of non-commercial content (i.e., content not primarily for purposes of advertising, such as a sporting event or movie) and a commercial (e.g., a pet food commercial).” Ray at [0032]. “ In preparing content for broadcast to the consumer, a broadcaster or other entity can use the consumer’s profile to select commercials to transmit to the consumer. For example, in preparing a transmission to a consumer that is willing to watch pet food and soup commercials, the broadcaster can transmit pet food and soup commercials to that consumer. Thus, a match is made between an available commercial for broadcast and a selected category in the consumer’s profile, as indicated by block 620. In block 624, the selected commercial can then be incorporated in a transmission of program content to the consumer.” Ray at [0038]. “An advertiser provides a commercial with meta-information about a subject, target demographic and rules in regard to usage of points. The primary content provider creates content with designated commercial breaks. The primary content provider sets price in ‘points per second’ for commercial space in the content. A commercial is delivered to the viewing device of the consumer and stored. This could be accomplished in-line with program content or ahead of time. It could also be accomplished over a network or dedicated/leased programming channel. The commercial can be stored with meta-information for later playback at the consumer’s receiver. Primary content is delivered to the viewing device with meta-information about the type of programming and available spots as well as price per second in points of various timeslots. The viewing

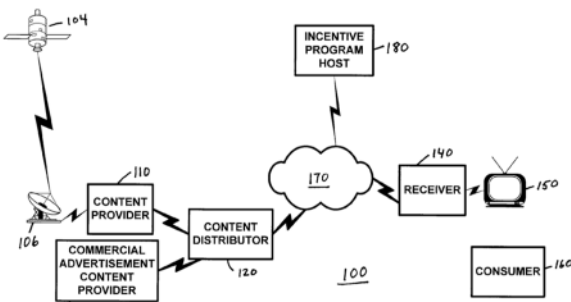
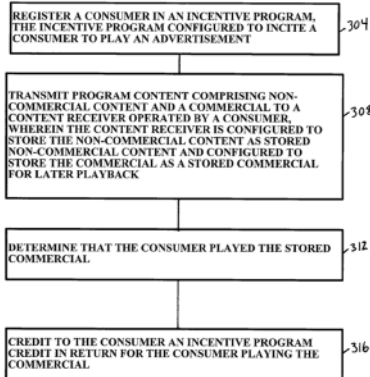
Claim Limitation	Exemplary Disclosure in the Prior Art
	device decides which commercials to show based on viewer profile combined with available commercial meta-information.” Ray at [0042]. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10bi] a first controller adapted to issue, without intermediary of the moving image data delivery system, to one of the moving image viewing apparatuses an electric data denoting a right of viewing a television program in exchange of commercial message view by the moving image viewing apparatus, provided by the advertising image data delivery system,	Ray expressly or inherently discloses “a first controller adapted to issue, without intermediary of the moving image data delivery system, to one of the moving image viewing apparatuses an electric data denoting a right of viewing a television program in exchange of commercial message view by the moving image viewing apparatus, provided by the advertising image data delivery system.” For example: “[A] system is utilized that provides incentive to a consumer to view advertisements such as television commercials.” Ray at [0024]. “The present embodiment of the invention therefore can be beneficial in that it incites (i.e., provides incentive) to a consumer to play a commercial.” Ray at [0024]. “[T]he broadcaster can obtain commercial content from an advertiser 130.” Ray at [0025]. “The broadcaster combines the non-commercial program content with the commercial content such that the commercials are intermittently inserted within the non-commercial program content.” Ray at [0025]. “The combined content can be broadcast to receivers operated by consumers, such as receiver 140 operated by consumer 160. If the content is audio-visual, the consumer can view the content on display 150. If the content is purely audio, the user can play the content on an audio player.” Ray at [0026]. “Furthermore, the receiver can also operate as a transmitter so as to send return signals in some instances to another part of the incentive system. For example, such transmission could be used to indicate that the consumer has watched a commercial.” Ray at [0027]. “[T]he incentive program host can register the consumer as a participant in the incentive program. The incentive program host can also obtain feedback from the consumer as to how the consumer felt about a particular advertisement or whether the consumer actually played a commercial advertisement.” Ray at [0028].

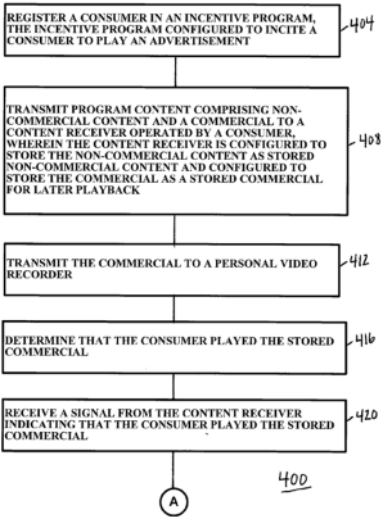
Claim Limitation	Exemplary Disclosure in the Prior Art
	“The incentive program host can also perform redemption of incentive credits.” Ray at [0028]. “The system of FIG. 1 allows a consumer to register with the incentive program for purposes of receiving some form of value in return for playing a stored commercial. For example, when a consumer records a sporting event on his/her personal video recorder, that recorded sporting event can typically be played back without having to watch the commercials. However, the incentive program system shown in FIG. 1 would provide the consumer with some form of value when the consumer actually does watch the recorded commercials. The length of time spent viewing the commercials or the number of commercials played, for example, can then be reported back by the consumer's receiver 140 to the incentive program host 180. Under predetermined incentive program rules, the incentive program host can then credit the consumer's incentive program account with a corresponding value. For example, the incentive program might provide a consumer's account with a point for every commercial that is viewed. As another example, the incentive program might provide the consumer's account with 3 minutes worth of time toward a predetermined number of minutes required to receive a reward. In such an example, a consumer might be required to view 30 minutes of commercials before being eligible for a reward.” Ray at [0029]. “[A] consumer registers with an incentive program. More specifically, the consumer registers with an incentive program that is configured to reward the consumer for playing commercial advertisements, such as viewing television ads, or listening to radio ads, etc.” Ray at [0032]. “The program content can be comprised of non-commercial content (i.e., content not primarily for purposes of advertising, such as a sporting event or movie) and a commercial (e.g., a pet food commercial).” Ray at [0032]. “Upon playback of the program content, a determination can be made as to whether the consumer actually played the commercial, as shown in block 312. For example, this can be implemented by using software stored on a personal video recorder to determine whether the consumer played an identified commercial or skipped over the identified commercial. Similarly, the consumer can be presented with an option of viewing an identified commercial by the personal video recorder. If the user selects not to view the presented commercial, then the PVR can report that that commercial was not played. However, when a consumer does play a commercial, then the consumer's account can be credited with an incentive program credit, as shown by block 316.” Ray at [0033]. “This effectively provides some type of value to the consumer for playing the commercial. It should be noted that even credit towards a reward threshold is understood to be of value to a consumer.” Ray at [0033].

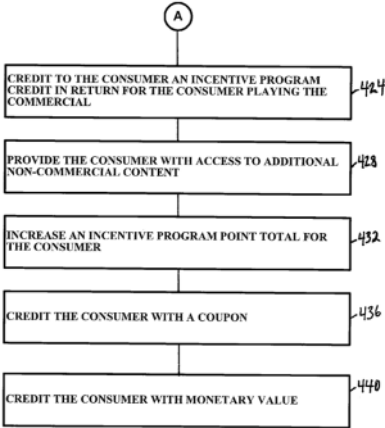
Claim Limitation	Exemplary Disclosure in the Prior Art
	“[A] consumer is registered as part of an incentive program in accordance with block 404. The incentive program is configured to provide an incentive to a consumer to play an advertisement, such as a television commercial or a radio advertisement.” Ray at [0034]. “[P]rogram content is transmitted to a content receiver. The program content is comprised of non-commercial content as well as at least one commercial.” Ray at [0034]. “[T]he commercial (and non-commercial) content can be transmitted to a personal video recorder.” Ray at [0034]. “The consumer watching the commercial content can then be prompted as to whether he or she wants to view a commercial and receive credit under the incentive program. If the consumer chooses to play the commercial, the personal video recorder can make a record of that event for reporting to the incentive program. If the consumer does not choose to play the program, then the non-commercial content can continue to be played. This is illustrated by block 416. In block 420, the content receiver, e.g., the PVR, can report the consumer's behavior to the incentive program host.” Ray at [0034]. “[T]he consumer can then be credited with some type of credit in return for the consumer playing a commercial. For example, block 428 shows that the consumer could be provided with access to additional non-commercial content—for example, extra footage from the making of a movie that the consumer is currently viewing. Or, the consumer's incentive account could be credited with a predetermined number of points that are awarded for watching a television commercial, as shown by block 432. As another example, the consumer could be provided with a coupon, as shown by block 436. Or, the consumer could be credited with monetary value, such as cash in a cash account or credit redeemable from an incentive account or a discount applicable to a consumer's cable television account.” Ray at [0034]. “In preparing content for broadcast to the consumer, a broadcaster or other entity can use the consumer's profile to select commercials to transmit to the consumer. For example, in preparing a transmission to a consumer that is willing to watch pet food and soup commercials, the broadcaster can transmit pet food and soup commercials to that consumer. Thus, a match is made between an available commercial for broadcast and a selected category in the consumer's profile, as indicated by block 620. In block 624, the selected commercial can then be incorporated in a transmission of program content to the consumer.” Ray at [0038]. “A determination can then be made as to whether the consumer played the commercial, as shown by block 628. If played, the consumer can earn incentive program credit in accordance with the incentive program rules and conditions, as shown by block 632.” Ray at [0038].

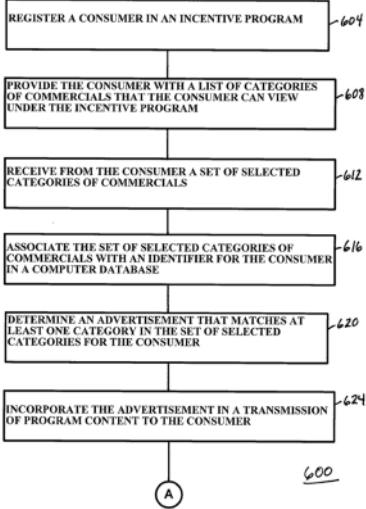
Claim Limitation	Exemplary Disclosure in the Prior Art
	“An advertiser provides a commercial with meta-information about a subject, target demographic and rules in regard to usage of points. The primary content provider creates content with designated commercial breaks. The primary content provider sets price in ‘points per second’ for commercial space in the content. A commercial is delivered to the viewing device of the consumer and stored. This could be accomplished in-line with program content or ahead of time. It could also be accomplished over a network or dedicated/leased programming channel. The commercial can be stored with meta-information for later playback at the consumer's receiver. Primary content is delivered to the viewing device with meta-information about the type of programming and available spots as well as price per second in points of various timeslots. The viewing device decides which commercials to show based on viewer profile combined with available commercial meta-information.” Ray at [0042]. “[P]rogram content that is comprised of non-commercial content and commercial content is transmitted to a consumer. The content is received at a receiver operated by the consumer. The receiver stores the content for later playback.” Ray at [0043]. “During playback, the consumer can be queried as to whether the consumer wants to play the stored commercial, as shown by block 708. In block 712, a determination is made as to whether the consumer selects playback of the stored commercial. For example, the consumer can select playback via selection of an icon displayed as a graphical user interface on a display screen. As one example shown by block 716, a personal video recorder can be configured to prompt the consumer when a commercial is encountered during playback of stored content and then to cause playback of the commercial if the consumer indicates that he or she wants to watch the commercial, as indicated by block 720. In block 724, a determination can be made that the consumer has played the commercial.” Ray at [0043]. “[B]lock 728 shows that a consumer can be credited with incentive program credit for having played a commercial.” Ray at [0043]. “In block 904, a consumer registers in an incentive program that is configured to provide incentive to a consumer to play advertisements, such as viewing commercials stored on a personal video recorder. In block 908, the consumer is credited with an incentive program credit in response tot the consumer playing an advertisement. In block 912, the consumer may redeem the incentive credit that has been earned. Redemption of incentive program credit may be accomplished in a number of ways. For example, redemption may be accomplished by providing the consumer with additional program content, as illustrated by block 916. As an example of this, a consumer watching a movie could redeem incentive program credit to obtain transmission of behind-the-scenes content that is often distributed with DVD's when movies are released as DVD's. Or, a

Claim Limitation	Exemplary Disclosure in the Prior Art
	consumer watching a sporting event could redeem the incentive program credits to obtain continued broadcast coverage of highlights or interviews from the event. As another redemption option, block 920 shows that a consumer can be provided with a coupon. Such a coupon could be provided to a consumer for watching a commercial or for watching a number of commercials or for watching a number of commercial minutes, as detailed by the incentive program rules and conditions.” Ray at [0047]. “A ‘forward channel’ shall mean a delivery mechanism for delivering video data to a viewing device. This includes but is not limited to aerial television broadcast, cable and satellite television feeds, as well as on-demand video streaming of content over a network such as the internet.” Ray at [0049]. “According to various embodiments of the present invention, incentives are offered to viewers for watching advertisements, and reports are generated concerning advertisement effectiveness.” Ray Prov. at 1. “Various embodiments of the present invention allow advertisers to provide incentives to the viewer such as loyalty points and/or discounts based on the commercials they view or listen to via PVRs or audio devices such as podcasts. This solution provides viewers with a way to select which commercials they wish to view and provides benefits to the viewers for doing so.” Ray Prov. at 1. “Incentive — Depending on the advertisement and length of commercial, the advertiser provides incentives to the viewer in terms of loyalty program points or product discounts. Additionally, the viewer can provide the advertiser feedback on the ad and their perception of the product or service being offered for additional incentives.” Ray Prov. at 3.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 FIG. 1 Ray at Fig. 1.  FIG. 3 Ray at Fig. 3.

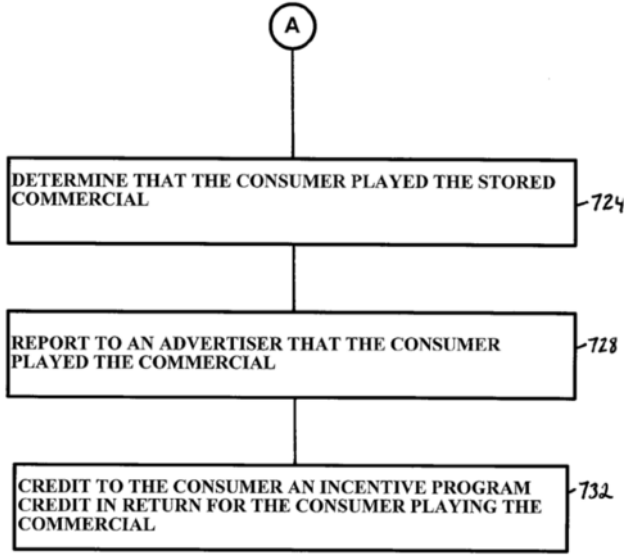
Claim Limitation	Exemplary Disclosure in the Prior Art
	 FIG. 4A Ray at Fig. 4A.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 FIG. 4B Ray at Fig. 4B.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 <pre> graph TD 604[REGISTER A CONSUMER IN AN INCENTIVE PROGRAM] --> 608[PROVIDE THE CONSUMER WITH A LIST OF CATEGORIES OF COMMERCIALS THAT THE CONSUMER CAN VIEW UNDER THE INCENTIVE PROGRAM] 608 --> 612[RECEIVE FROM THE CONSUMER A SET OF SELECTED CATEGORIES OF COMMERCIALS] 612 --> 616[ASSOCIATE THE SET OF SELECTED CATEGORIES OF COMMERCIALS WITH AN IDENTIFIER FOR THE CONSUMER IN A COMPUTER DATABASE] 616 --> 620[DETERMINE AN ADVERTISEMENT THAT MATCHES AT LEAST ONE CATEGORY IN THE SET OF SELECTED CATEGORIES FOR THE CONSUMER] 620 --> 624[INCORPORATE THE ADVERTISEMENT IN A TRANSMISSION OF PROGRAM CONTENT TO THE CONSUMER] 624 --> 600((A)) </pre> FIG. 6A Ray at Fig. 6A.

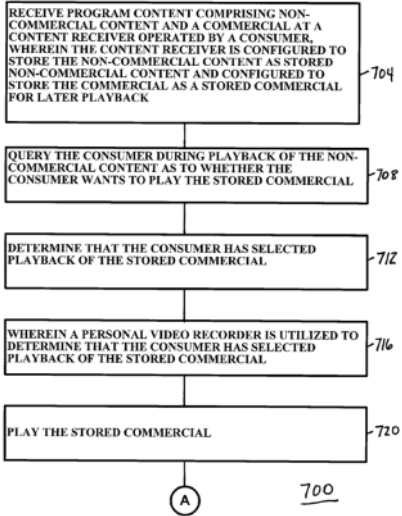
Claim Limitation	Exemplary Disclosure in the Prior Art
	<pre> graph TD A((A)) --> 628[DETERMINE WHETHER THE CONSUMER PLAYED THE ADVERTISEMENT] 628 --> 632[CREDIT THE CONSUMER WITH INCENTIVE CREDIT IN RETURN FOR THE CONSUMER PLAYING THE ADVERTISEMENT] 632 --> 636[OBTAIN DEMOGRAPHIC DATA OF THE CONSUMER;] 636 --> 640[REPORT THE DEMOGRAPHIC DATA OF THE CONSUMER TO AN ADVERTISER ASSOCIATED WITH THE ADVERTISEMENT] </pre> FIG. 6B Ray at Fig. 6B.

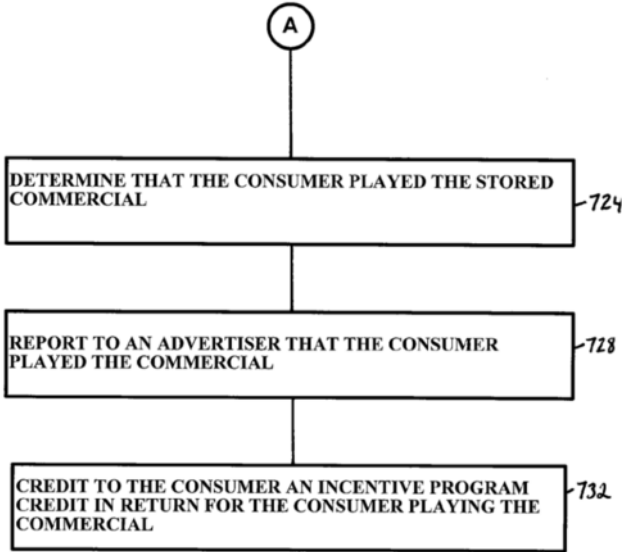
Claim Limitation	Exemplary Disclosure in the Prior Art
	RECEIVE PROGRAM CONTENT COMPRISING NON-COMMERCIAL CONTENT AND A COMMERCIAL AT A CONTENT RECEIVER OPERATED BY A CONSUMER, WHEREIN THE CONTENT RECEIVER IS CONFIGURED TO STORE THE NON-COMMERCIAL CONTENT AS STORED NON-COMMERCIAL CONTENT AND CONFIGURED TO STORE THE COMMERCIAL AS A STORED COMMERCIAL FOR LATER PLAYBACK 704 QUERY THE CONSUMER DURING PLAYBACK OF THE NON-COMMERCIAL CONTENT AS TO WHETHER THE CONSUMER WANTS TO PLAY THE STORED COMMERCIAL 708 DETERMINE THAT THE CONSUMER HAS SELECTED PLAYBACK OF THE STORED COMMERCIAL 712 WHEREIN A PERSONAL VIDEO RECORDER IS UTILIZED TO DETERMINE THAT THE CONSUMER HAS SELECTED PLAYBACK OF THE STORED COMMERCIAL 716 PLAY THE STORED COMMERCIAL 720 A 700 FIG. 7A Ray at Fig. 7A.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 <pre> graph TD A((A)) --> 724[DETERMINE THAT THE CONSUMER PLAYED THE STORED COMMERCIAL] 724 --> 728[REPORT TO AN ADVERTISER THAT THE CONSUMER PLAYED THE COMMERCIAL] 728 --> 732[CREDIT TO THE CONSUMER AN INCENTIVE PROGRAM CREDIT IN RETURN FOR THE CONSUMER PLAYING THE COMMERCIAL] </pre> Ray at Fig. 7B.

Claim Limitation	Exemplary Disclosure in the Prior Art
	<pre> graph TD 904[REGISTER A CONSUMER IN AN INCENTIVE PROGRAM, THE INCENTIVE PROGRAM CONFIGURED TO INCITE THE CONSUMER TO PLAY AN ADVERTISEMENT] --> 908[CREDIT THE CONSUMER WITH INCENTIVE PROGRAM CREDIT IN RESPONSE TO THE CONSUMER PLAYING THE ADVERTISEMENT] 908 --> 912[REDEEM THE INCENTIVE PROGRAM CREDIT] 912 --> 916[PROVIDE THE CONSUMER WITH ADDITIONAL PROGRAM CONTENT] 916 --> 920[PROVIDE THE CONSUMER WITH A COUPON] 920 --> 924[PROVIDE THE CONSUMER WITH MONETARY VALUE] </pre> 900 FIG. 9 Ray at Fig. 9. <pre> graph TD 1004[VIEWER] -- STEP 1 --> 1012[LOYALTY PLATFORM PROVIDER HOST] 1012 -- STEP 2a --> 1016[ADVERTISER] 1016 -- STEP 3 --> 1020[FORWARD CHANNEL CONTENT PROVIDER] 1020 -- STEP 4 --> 1008[ENABLED VIEWING DEVICE] 1008 -- STEP 6 --> 1004 1008 -- STEP 7 --> 1012 1012 -- STEP 5 (OPT 1) --> 1016 1016 -- STEP 2b --> 1012 1020 -- STEP 9 --> 1004 </pre> 1000 FIG. 10 Ray at Fig. 10.

Claim Limitation	Exemplary Disclosure in the Prior Art
	To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10bii] wherein the one of the moving image viewing apparatuses is provided with the television program from the moving image data delivery system in exchange of a presentation of the electric data to the moving image data delivery system from the one of the moving image viewing apparatus;	Ray expressly or inherently discloses “wherein the one of the moving image viewing apparatuses is provided with the television program from the moving image data delivery system in exchange of a presentation of the electric data to the moving image data delivery system from the one of the moving image viewing apparatus.” For example: <i>See above at row [1bi].</i> To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10ci] a second controller adapted to receive an electric payment from the advertiser in exchange of a presentation of a report from the advertising image data delivery system to the advertiser, the report indicating that the advertising image data delivery system issues the electric data to the moving image viewing apparatuses,	Ray expressly or inherently discloses “a second controller adapted to receive an electric payment from the advertiser in exchange of a presentation of a report from the advertising image data delivery system to the advertiser, the report indicating that the advertising image data delivery system issues the electric data to the moving image viewing apparatuses.” For example: “[B]lock 728 indicates that a report can be made to an advertiser that a consumer (or a group of consumers) watched an advertisement. This can be valuable information to broadcasters, advertisers and others in that it indicates products or categories of commercials for which consumers are willing to view commercials.” Ray at [0043]. “When a commercial is played by the consumer, the consumer can be presented with a graphical user interface that queries the consumer about the consumer's reaction to the advertisement. For example, the query can be whether the consumer liked/disliked the product (block 824), liked/disliked the advertisement (block 820), likes/dislikes the advertiser (block 828), likes/dislikes the manufacturer of the product, would like more information about the product, would like to know of a web site to learn more about the product, etc. An input device such as a remote control button can be used to select a response to the query—for example by selecting yes/no options displayed as a graphical user interface on the display screen. The

Claim Limitation	Exemplary Disclosure in the Prior Art
	received input can then be saved as immediate feedback from the consumer, as shown by block 816. As noted previously, this information may then be reported to interested parties. Furthermore, the consumer can be credited with additional incentive program credit for this more active level of participation in the incentive program. Reports may be generated from the consumers' feedback. Thus, advertisers may periodically review the results of their advertising campaigns, including how many people viewed their advertisement (segmented by demographic group, for example) as well as feedback from viewers on the effectiveness of their advertising campaigns.” Ray at [0045]–[0046].  <pre> graph TD 704[RECEIVE PROGRAM CONTENT COMPRISING NON-COMMERCIAL CONTENT AND A COMMERCIAL AT A CONTENT RECEIVER OPERATED BY A CONSUMER, WHEREIN THE CONTENT RECEIVER IS CONFIGURED TO STORE THE NON-COMMERCIAL CONTENT AS STORED NON-COMMERCIAL CONTENT AND CONFIGURED TO STORE THE COMMERCIAL AS A STORED COMMERCIAL FOR LATER PLAYBACK] --> 708[QUERY THE CONSUMER DURING PLAYBACK OF THE NON-COMMERCIAL CONTENT AS TO WHETHER THE CONSUMER WANTS TO PLAY THE STORED COMMERCIAL] 708 --> 712[DETERMINE THAT THE CONSUMER HAS SELECTED PLAYBACK OF THE STORED COMMERCIAL] 712 --> 716[WHEREIN A PERSONAL VIDEO RECORDER IS UTILIZED TO DETERMINE THAT THE CONSUMER HAS SELECTED PLAYBACK OF THE STORED COMMERCIAL] 716 --> 720[PLAY THE STORED COMMERCIAL] 720 --> A((A)) </pre> FIG. 7A Ray at Fig. 7A.

Claim Limitation	Exemplary Disclosure in the Prior Art
	 <pre> graph TD A((A)) --> 724[DETERMINE THAT THE CONSUMER PLAYED THE STORED COMMERCIAL] 724 --> 728[REPORT TO AN ADVERTISER THAT THE CONSUMER PLAYED THE COMMERCIAL] 728 --> 732[CREDIT TO THE CONSUMER AN INCENTIVE PROGRAM CREDIT IN RETURN FOR THE CONSUMER PLAYING THE COMMERCIAL] </pre> Ray at Fig. 7B. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10cii] wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message; and	Ray expressly or inherently discloses “wherein no electric payment is made to the moving image data delivery system when the advertising image data delivery system issues the electric data to the moving image viewing apparatus in exchange of viewing commercial message.” For example: <i>See above at row [1biii].</i> To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the

Claim Limitation	Exemplary Disclosure in the Prior Art
	cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
[10d] a third controller adapted to allot the received electric payment to the moving image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data.	Ray expressly or inherently discloses “a third controller adapted to allot the received electric payment to the moving image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data.” For example: <i>See above at row [1c].</i> To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
12. The advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses by request thereof.	Ray expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses by request thereof.” For example: “The system of FIG. 1 allows a consumer to register with the incentive program for purposes of receiving some form of value in return for playing a stored commercial. For example, when a consumer records a sporting event on his/her personal video recorder, that recorded sporting event can typically be played back without having to watch the commercials. However, the incentive program system shown in FIG. 1 would provide the consumer with some form of value when the consumer actually does watch the recorded commercials. The length of time spent viewing the commercials or the number of commercials played, for example, can then be reported back by the consumer's receiver 140 to the incentive program host 180. Under predetermined incentive program rules, the incentive program host can then credit the consumer's incentive program account with a corresponding value. For example, the incentive program might provide a consumer's account with a point for every commercial that is viewed. As another example, the incentive program might provide the consumer's account with 3 minutes worth of time toward a predetermined number of minutes required to receive a reward. In such an example, a consumer might be required to view 30 minutes of commercials before being eligible for a reward.” Ray at [0029].

Claim Limitation	Exemplary Disclosure in the Prior Art
	“[A] consumer registers with an incentive program. More specifically, the consumer registers with an incentive program that is configured to reward the consumer for playing commercial advertisements, such as viewing television ads, or listening to radio ads, etc.” Ray at [0032]. “The consumer watching the commercial content can then be prompted as to whether he or she wants to view a commercial and receive credit under the incentive program. If the consumer chooses to play the commercial, the personal video recorder can make a record of that event for reporting to the incentive program. If the consumer does not choose to play the program, then the non-commercial content can continue to be played. This is illustrated by block 416. In block 420, the content receiver, e.g., the PVR, can report the consumer's behavior to the incentive program host.” Ray at [0034]. “In preparing content for broadcast to the consumer, a broadcaster or other entity can use the consumer's profile to select commercials to transmit to the consumer. For example, in preparing a transmission to a consumer that is willing to watch pet food and soup commercials, the broadcaster can transmit pet food and soup commercials to that consumer. Thus, a match is made between an available commercial for broadcast and a selected category in the consumer's profile, as indicated by block 620. In block 624, the selected commercial can then be incorporated in a transmission of program content to the consumer.” Ray at [0038]. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.
13. The advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses, the advertising image data of commercial message being related to a television program	Ray expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses, the advertising image data of commercial message being related to a television program designated by the moving image viewing apparatus.” To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art. In particular, Ray teaches the general concept of delivering advertising image data of commercial

Claim Limitation	Exemplary Disclosure in the Prior Art
designated by the moving image viewing apparatus.	messages to the plurality of moving image viewing apparatuses. <i>See</i> limitations 10.a-10.b.i. Although Ray does not explicitly disclose the content of the commercial message, Ray is not limited to a particular commercial message. A POSITA would have understood and found obvious that the advertising image data provided by advertising image data delivery system can be modified to include a commercial message related to the television program selected by the moving image viewing apparatus.
14. The advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses, the plurality of advertising image data of commercial messages including an advertisement of a television program.	Ray expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10 further comprising a fourth controller adapted to electrically provide one of the plurality of advertising image data of commercial messages to one of the plurality of moving image viewing apparatuses, the plurality of advertising image data of commercial messages including an advertisement of a television program.” To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art. In particular, Ray teaches the general concept of delivering advertising image data of commercial messages to the plurality of moving image viewing apparatuses. <i>See</i> limitations 10.a-10.b.i. Although Ray does not explicitly disclose the content of the commercial message, Ray is not limited to a particular commercial message. A POSITA would have under-stood and found obvious that the advertising image data provided by advertising image data delivery system can be modified to include a commercial message that includes an advertisement of a television program.
15. The advertising image data delivery system according to claim 10, wherein the advertising image data delivery system is integrated into a system of the advertiser.	Ray expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10, wherein the advertising image data delivery system is integrated into a system of the advertiser.” To the extent Ray does not disclose any part of this limitation, Ray renders this limitation obvious. It would have been obvious to a person of ordinary skill in the art to practice this limitation in light of Hisamune combined with the knowledge of a person of ordinary skill in the art, and in light of Hisamune combined with any of the other prior art references identified in the contentions for this patent, including Hisamune. The manner in which each of these references discloses and/or renders obvious this limitation is set forth in these contentions. All of these disclosures also would have been within the knowledge of a person of ordinary skill in the art.

Claim Limitation	Exemplary Disclosure in the Prior Art
	Moreover, it would have been obvious to a person of ordinary skill in the art to combine Ray with the following prior art: For example, Nolan expressly or inherently discloses “[t]he advertising image data delivery system according to claim 10, wherein the advertising image data delivery system is integrated into a system of the advertiser.” For example: “The Facilitator arranges with the Advertiser to supply a produced commercial message and the interactive information request that would be part of the body of the advertising message or a tag on the end. The Advertiser might elect to have the Facilitator produce and supply the commercial and interactive request. 909.” Nolan at [0113]. To the extent that Ray does not disclose any elements of this claim limitation, it would have been obvious to a person having ordinary skill in the art to combine, with the with the teachings of Nolan, Massive, SWAT 4, LOR and/or Hisamune, those elements, as known to them or as disclosed by other prior art identified in the cover pleading or herein, and/or in combination with the general knowledge of a person having ordinary skill in the art.