

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and AMAZON WEB SERVICES, INC.,¹
Petitioner,

v.

ZIKLAG IP LLC,
Patent Owner.

IPR2025-00700
U.S. Patent No. 6,182,128 B1

**PETITIONER'S AUTHORIZED
POST-SUR-REPLY CLAIM CONSTRUCTION BRIEF**

¹ Amazon Web Services, Inc., filed a petition and a motion for joinder in IPR2026-00047, and has been joined as a petitioner in this proceeding.

I. INTRODUCTION

No construction of “*distributing/transmitting...in substantially real time*” is required to resolve the controversy in this proceeding: Yurt explicitly discloses transmitting at least in “real time.” *See, e.g.*, Ex.1005, Abstract, 1:66-2:4, 4:68-5:3. Recognizing this, Patent Owner first attempted to distinguish Yurt in its Response by arguing that “[s]ubstantially real time requires playback while transmission is ongoing.” Response, 30. But Petitioner’s Reply pointed out that Yurt also expressly teaches providing media “for immediate viewing *as it is distributed*.” Ex.1005, 5:1-9; Reply, 15. Undeterred, PO shifted its position yet again in the Sur-Reply, newly alleging that “*substantially real time*” is “***not*** satisfied by merely timing playback” and “refers to a system that, in response to a user request, determines where content resides in storage and routes the content across distribution centers while playback is occurring.” Sur-Reply, 5. This new understanding is not supported by the claim language or specification—and, in any event, is also rendered obvious by Yurt.

II. “***REAL TIME***” TRANSMISSION IS THE SAME IN BOTH THE ’128 PATENT AND YURT

The ’128 patent describes two distinct ways audio files may be delivered and played back to a user: (i) in “real time” so the user can immediately begin playing the audio without waiting, and (ii) by downloading and playing later. Ex.1001, 2:26-29. For the “real time” option, the ’128 patent explains that the user system “receives

and decodes the requested files...for an immediate audio playback on the speakers.” *Id.* at 6:24-27. In contrast, for the download and play option, “the user needs to download the selection; after the downloading is complete, the user may listen to the selection by playing it back.” *Id.* at 1:45-49. Claim 1 of the ’128 patent recites the “real time” option: “*distributing/transmitting...in substantially real time.*”

As explained in the Petition and Reply, Yurt expressly teaches this same “real time” option, and thus no construction is necessary. In Yurt, selected audio files are “sent over any one of several existing communication channels in a fraction of real time,” where at the user’s system the material is provided “for immediate viewing as it is distributed by transmission system 100.” Ex.1005, 1:67-2:4, Abstract, 4:64-5:9; Reply, 15. Yurt’s identical teachings about transmitting audio data at least in real time for “immediate viewing” as it is being distributed is dispositive regarding transmitting in “substantially real time.” *See* Ex.1003, ¶¶79-80; Reply, 16.

III. PO’S INITIAL REQUIREMENT OF PLAYBACK DURING TRANSMISSION DOES NOT DISTINGUISH YURT

As explained in the Reply, Yurt also teaches PO’s initial requirement that “[s]ubstantially real time requires playback while transmission is ongoing.” Response, 30; Reply, 9-10, 17-19. Yurt teaches receiving and decoding audio fast enough “*for immediate viewing as it is distributed by transmission system 100.*” Ex.1005, 5:3-9. This means Yurt teaches the “purpose of the invention” of the ’128

patent according to the *inventor himself*, Mr. Johnson: “the whole purpose of the invention was to find a way to deliver media while that allowed playback while the file was still arriving. So that’s how I would describe the substantially realtime; playback while the file is still arriving.” Ex.1018, 48:14-22. Accordingly, Yurt teaches “*substantially real time*”—even as understood by the inventor.

IV. PO’S NEW REQUIREMENT IN THE SUR-REPLY IS NOT SUPPORTED AND DOES NOT DISTINGUISH YURT

PO’s Sur-Reply advances a new theory with even more “requirements” for “*substantially real time*”: “a coordinated operational model...not satisfied by merely timing playback,” where the system must “determine[] where content resides in storage and route[] the content across distribution centers while playback is occurring.” Sur-Reply, 5, 9-10. That theory is wrong on its face, and, even if adopted, Yurt renders it obvious.

A. The intrinsic evidence contradicts PO’s new theory.

First, this new theory apparently requires *routing* content across distribution centers “while playback is occurring.” But nothing in claim 1’s plain language links the transmission in real time of “*requested*” audio files to the user by each distribution center with the separately recited routing of “*digital audio data files*” between distribution centers. See Claim 1 (distribution center: “*sequentially transmitting said requested digital audio files in substantially real time to said*

user”; central controller: “***routing digital audio data files*** between said distribution centers”). That is, the controller’s “*routing*” operates on “*digital audio files*,” **not** on “*said requested digital audio files*.” Similarly, claim 1 is a **system** claim that does not place any timing requirement on the routing relative to the real time transmission.

Second, the requirement that “determin[ing] where content resides in storage” must occur “while playback is occurring” is non-sensical. Playback cannot logically begin until ***after*** a file has been located. Moreover, this allegedly necessary search-and-route functionality is recited in independent ***claim 2***, not claim 1. Claim 1 includes no determination that a file is unavailable locally, no file-import request, and no searching and routing from another center’s library. Limitations in claim 2 cannot define claim 1’s separate recitation of “*substantially real time*.”

Third, the specification contradicts PO’s theory. It describes routing a “user request” to the control center and then routing an audio file directly to the user (not between distribution centers). Ex.1001, 2:56-62; 5:33-43. Nothing there requires or links inter-center routing with real-time playback at the user. Rather, it is the “high bandwidth of the existing cable system” from the distribution center to the user that allows “the requested audio file [to] be played back in real time.” *Id.* at 6:33-35. PO’s new theory therefore contradicts the intrinsic evidence and should be rejected.

B. Yurt renders obvious PO’s new theory.

To the extent PO’s requirement of routing files between centers “while

playback is occurring” is even feasible, Yurt’s playback-during-transmission system renders it obvious.

Yurt provides content “for immediate viewing as it is distributed by transmission system 100.” Ex.1005, 5:1-9. To facilitate this, Yurt’s “remote order processing and item database 300” maintains “a database of available titles at multiple locations,” and its “dispatching control software...sends distribution requests to the distribution systems.” Ex.1005, 15:10-15, 17:54-57. For a request, database 300 “connects to the compressed data library 118 of choice” and conveys the request details. Ex.1005, 15:23-32. Yurt thus captures the coordinated, request-driven locate-and-route operation PO says is required for “*substantially real time*.”

To the extent PO insists the inter-center routing must overlap playback, Yurt teaches that too. Yurt’s inter-library transfers move content in the same compressed, transmission-ready block structure used for delivery, so “there is no need to perform compression...retrieved items are passed directly from identification encoder 112 to the compressed data formatter 117.” Ex.1005, 7:44-50. Thus, Yurt’s compressed inter-library transfers would occur as part of the *same real-time delivery*.

V. CONCLUSION

The Board should apply the plain meaning of “*substantially real time*” and find the claims unpatentable under Yurt’s virtually identical disclosure.

Respectfully submitted,

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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 6,182,128
Ex.1002	Prosecution History of U.S. Patent No. 6,182,128
Ex.1003	Declaration of Dr. Andrew Lippman under 37 C.F.R. § 1.68
Ex.1004	<i>Curriculum Vitae</i> of Dr. Andrew Lippman
Ex.1005	U.S. Patent No. 5,132,992 (Yurt)
Ex.1006	U.S. Patent No. 5,732,216 (Logan)
Ex.1007	U.S. Patent No. 5,790,935 (Payton)
Ex.1008	U.S. Patent No. 5,999,970 (Krisbergh)
Ex.1009	WO96/41285 (Kenner)
Ex.1010	U.S. District Courts Statistics (Updated December 2024)
Ex.1011	Complaint; Dkt. 20, <i>Ziklag IP LLC v. Apple Inc.</i> , Case No. 1:24-cv-1787 (NDIL)
Ex.1012	Copy of Full Docket of related District Court Case as of March 5, 2025 (Case No. 1:24-cv-1787 (NDIL))
Ex.1013	Karker et al., "Consistent Hashing and Random Trees: Distributed Caching Protocols for Relieving Hot Spots on the World Wide Web," Proc. Of the 29 th Annual ACM Symposium on Theory of Computing, 1997, 654-663 (Karger)
Ex.1014	"Radio Frequency Interface Specification," Data Over Cable Interface Specifications, SP-RFI01-970326, March 26, 1997 (DOCSIS)
Ex.1015	Sager, G., "Time Warner Cable Full Service Network – Silicon Graphics Technology and Architecture Overview, In: Brenner, W., Kolbe, L. (eds) The Information Superhighway and Private Households. Physica-Verlag HD (1996) (Sager)

Ex.1016	Joint Motion to Stay Discovery Deadlines; Dkt. 22, <i>Ziklag IP LLC v. Apple Inc.</i> , Case No. 1:24-cv-1787 (NDIL)
Ex.1017	Deposition Transcript of Ian McCulloh, Ph.D., March 10, 2026
Ex.1018	Deposition Transcript of Mr. Loren Johnson, March 11, 2026
Ex.1019	Board email authorizing Motion to Strike (May 5, 2026)

CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. §42.6(e) service was made on Patent Owner as detailed below.

Date of service June 9, 2026

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Documents served **Petitioner's Authorized Post-Sur-Reply Claim
Construction Brief**

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