

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**AMAZON.COM, INC.,
AMAZON.COM SERVICES LLC,
AMAZON WEB SERVICES, INC.,
and AUDIBLE, INC.,**
Petitioners,

v.

AUDIO POD IP, LLC,
Patent Owner.

Case No. IPR2025-00765
U.S. Patent No. 8,738,740

**PETITION FOR *INTER PARTES* REVIEW OF
CLAIMS 12-17 OF U.S. PATENT NO. 8,738,740**

DECLARATION OF PROFESSOR KETAN MAYER-PATEL, Ph.D.

Amazon v. Audio Pod
US Patent 8,738,740
Amazon EX-1002

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I, Ketan Mayer-Patel, do hereby declare:

XV.—I am making this declaration at the request of Petitioners Amazon.com, Inc., Amazon.com Services LLC, Amazon Web Services, Inc., and Audible, Inc.

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TABLE OF EXHIBITS

1. (“Petitioners”). I have been retained by Petitioners as a technical expert in this mat- ter.

2. I am being compensated for my work on this case. My compensation does not depend on the content of this Declaration or the outcome of these proceed- ings.

I. BACKGROUND

A. Experience and Qualifications

3. I received Bachelor of Arts degrees in Computer Science and Econom- ics in 1992, a Master of Science in 1997 from the Department of Electrical Engi- neering and Computer Science, and a Ph.D. in 1999 from the Department of Electri- cal Engineering and Computer Science, all from the University of California, Berke- ley.

4. I have been involved in the research and development of multimedia computing systems for nearly 30 years. I have been a faculty member at the Uni- versity of North Carolina since January 2000, where I perform research and teach in the areas of networking, web programming, and multimedia computing. I also have

expertise other areas, including distributed systems, networking devices, and the general operation of computer systems.

5. I am a member of the Association for Computing Machinery (ACM) and the Institute of Electrical and Electronics Engineers (IEEE). These are the two leading professional societies for both academic and practicing computer scientists.

6. I have authored or co-authored over 30 papers in peer-reviewed journals and conference proceedings. I have served as an Associate Editor for both IEEE Transactions on Multimedia and ACM Transactions on Multimedia Computing, Communications, and Applications, which are the two leading journals in the field. I regularly serve as a member of the technical program committee for a number of different conferences and workshops including ACM Multimedia, The International Workshop on Network and Operating System Support for Digital Audio and Video (NOSSDAV), IFIP Networking, ACM Multimedia Systems (MMSys), MMEDIA, and SIGMAP. I am also currently chair of the standing executive committee for both NOSSDAV and MMSys. A complete listing of all my publications can be found in my CV, which I understand is being submitted as Exhibit 1096. I am also a named inventor or co-inventor on multiple issued patents, which are also listed in my CV.

7. My research has been supported by both government agencies as well as private industry. I received the National Science Foundation (NSF) CAREER Award in 2003 while an Assistant Professor. I have been a principal investigator for

grants awarded by the NSF, the Office of Naval Research, and the Laboratory of Analytic Sciences. I have also served on several NSF reviewing panels for funding recommendations.

8. In my research and teaching I have considered problems of video streaming, dynamic adaptation and transcoding of media, adaptive streaming transport protocols, telepresence, and scalable display architectures, among others.

9. In the classroom, I have regularly taught classes on Data Structures, Foundations of Programming, Modern Web Programming, Files and Databases, and Multimedia Computing and Networking. I also serve as the Director of Undergraduate Studies for the Department of Computer Science.

B. Materials Considered

10. In preparing this Declaration, I have considered the following materials:

Exhibit No.	Description
1001	U.S. Patent No. 8,738,740 (“the ’740 patent”)
~~1002~~	~~Declaration of Professor Ketan Mayer-Patel, Ph.D.~~
1003	NATIONAL INFORMATION STANDARDS ORGANIZATION, SPECIFICATIONS FOR THE DIGITAL TALKING BOOK (ANSI/NISO Z39.86-2002) (2002) (“DTB”)
1004	European Patent Publication No. EP 1463258 A1 (“Lindahl”)
1005	U.S. Patent Publication No. 2002/0069218 (“Sull”)

<u>Exhibit No.</u>	<u>Description</u>
1006	Yoshimura et al., <i>Content Delivery Network Architecture for Mobile Streaming Service Enabled by SMIL Modification</i> , 86 IEICE TRANSACTIONS ON COMM’N 1778 (2003) (“Yoshimura”)
1007	Excerpts from DICK C.A. BULTERMAN & LLOYD RUTLEDGE, SMIL 2.0, INTERACTIVE MULTIMEDIA FOR WEB AND MOBILE DEVICES (2004) (“Bulterman”)
<i>Exhibit Numbers 1008–1025 Not Used</i>	
1026	B. Prabhakaran, <i>Multimedia Synchronization</i> , in MULTIMEDIA SYSTEMS AND TECHNIQUES, 177-216 (Borko Furht, 1996) (“Prabhakaran”)
1027	U.S. Patent Publication No. 2003/0013073 (“Duncan”)
1028	U.S. Patent Publication No. 2002/0184189 (“Hay”)
<i>Exhibit Number 1029 Not Used</i>	
1030	U.S. Patent No. 6,260,011 (“Heckerman”)
<i>Exhibit Numbers 1031–1032 Not Used</i>	
1033	U.S. Patent No. 5,922,045 (“Hanson”)
1034	U.S. Patent No. 8,224,964 (“Fredrickson”)

~~Exhibit No.~~	~~Description~~
<i>~~Exhibit Numbers 1035–1050 Not Used~~</i>	
1051	Excerpts from World Wide Web Consortium, <i>Synchronized Multimedia Integration Language (SMIL 2.0) Specification</i> , W3C Recommendation (Aug. 7, 2001), https://www.w3.org/TR/2001/REC-smil20-20010807/smil20.html . (the “SMIL Standard”)
<i>~~Exhibit Numbers 1052–1060 Not Used~~</i>	
1061	U.S. Patent No. 6,622,171 (“Gupta”)
1062	U.S. Patent No. 6,208,995 (“Himmel”)
<i>~~Exhibit Numbers 10630–1068 Not Used~~</i>	
1069	PCT Patent Publication No. WO2002/080524A2 (“Dimitrova”)
<i>~~Exhibit Number 1070 Not Used~~</i>	
1071	U.S. Patent Publication No. 2005/0245243 (“Zuniga”)
<i>~~Exhibit Numbers 1072–1073 Not Used~~</i>	
1074	U.S. Patent No. 6,816,909 (“Chang”)
<i>~~Exhibit Numbers 1075–1094 Not Used~~</i>	
1095	File History of U.S. Patent No. 8,738,740
~~1096~~	~~CV of Professor Ketan Mayer Patel, Ph.D.~~
~~1097~~	~~Declaration of Sylvia D. Hall-Ellis, Ph.D.~~

~~Amazon.com, Inc. v. Audio Pod IP, LLC~~
~~IPR Petition—U.S. Pat. No. 8,738,740~~

~~Petitioners Amazon.com, Inc., Amazon.com Services LLC, Amazon Web Services, Inc., and~~
~~Audible, Inc.~~

11. In addition, I have reviewed the full file history of the '740 patent. I have also relied on my education, training, and experience, and my knowledge of pertinent literature in the field of the '740 patent.

II. APPLICABLE LEGAL STANDARDS

12. I have been asked to provide my opinion as to whether the claims of the '740 patent would have been obvious to a person of ordinary skill in the art at the time of the alleged invention, in view of the prior art.

13. I am a computer scientist by training and profession. The opinions I am expressing in this report involve the application of my training and technical knowledge and experience to the evaluation of certain prior art with respect to the '740 patent.

14. Although I have been involved as a technical expert in patent matters before, I am not an expert in patent law. Therefore, the attorneys from Knobbe, Martens, Olson & Bear, LLP have provided me with guidance as to the applicable patent law in this matter. The paragraphs below express my understanding of how I must apply current principles related to patent validity to my analysis.

A. Claim Construction

15. It is my understanding that in determining whether a patent claim is obvious in view of the prior art, the Patent Office construes the claim by giving the claim terms their plain and ordinary meaning, as they would have been understood

by a person of ordinary skill in the art at the time of the invention in view of the intrinsic record (patent specification and file history). For the purposes of this review, and to the extent necessary, I have interpreted each claim term in accordance with its plain and ordinary meaning as it would have been understood by a person of ordinary skill in the art at the time of the invention, in view of the intrinsic record. I understand that the time of the invention is December 13, 2005.

16. I understand that a patent and its prosecution history are considered “intrinsic evidence” and are the most important sources for interpreting claim language in a patent. I also understand that in reading the claim, I must not import limitations from the specification into the claim terms; in other words, I must not narrow the scope of the claim terms by implicitly adding disclosed limitations that have no express basis in the claims. The prosecution history of related patents and applications can also be relevant.

17. I understand that sources extrinsic to a patent and its prosecution history (such as dictionary definitions and technical publications) may also be used to help interpret the claim language, but that such extrinsic sources cannot be used to contradict the unambiguous meaning of the claim language that is evident from the intrinsic evidence.

18. Unless expressly stated herein, I have applied the plain and ordinary meaning of the claim terms, which I understand is the meaning that a person of

ordinary skill in the art would have given to terms in December 2005 based on a review of the intrinsic evidence.

B. Obviousness

19. It is my understanding that a claim is “obvious” if the claimed subject matter as a whole would have been obvious to a person of ordinary skill in the art at the time of the alleged invention. I understand that an obviousness analysis involves a number of considerations. I understand that the following factors must be evaluated to determine whether a claim would have been obvious: (i) the scope and content of the prior art; (ii) the differences, if any, between each claim of the ’740 patent and the prior art; (iii) the level of ordinary skill in the art in December 2005; and (iv) additional considerations, if any, that indicate that the invention was obvious or not obvious. I understand that these “additional considerations” are often referred to as “secondary considerations” of non-obviousness or obviousness.

20. I also understand that the frame of reference when evaluating obviousness is what a hypothetical person of ordinary skill in the pertinent art would have known in December 2005. I understand that the hypothetical person of ordinary skill is presumed to have knowledge of all pertinent prior art references.

21. It is my understanding that something is “inherent in,” and therefore taught by, the prior art, if it necessarily flows from the explicit disclosure of the prior art. I understand that the fact that a certain result or characteristic *may be* present in

the prior art is not sufficient to establish inherency. However, if the result or characteristic is necessarily present based upon the explicit disclosure in the prior art, it is inherent in the prior art and is therefore disclosed.

I understand that a prior art reference may be a pertinent prior art reference (or “analogous art”) if it is in the same field of endeavor as the patent or if it is pertinent to the problem that the inventors were trying to solve. A reference is reasonably pertinent if it logically would have commended itself to an inventor’s attention in considering the problem at hand. If a reference relates to the same problem as the claimed invention, that supports use of the reference as prior art in an obviousness analysis. Here, all of the references relied on in my obviousness analysis below are from the same field of endeavor as the ’740 patent, e.g., content distribution and/or rendering. The references are also pertinent to a particular problem the inventor was focused on, e.g., efficient and effective distribution and/or rendering of content.(“Petitioners” or “Amazon”) respectfully request *inter partes* review of claims 12–17 of U.S. Patent No. 8,738,740 (“the ’740 patent”), which Audio Pod IP, LLC (“Patent Owner” or “PO”) purportedly owns.

I. — INTRODUCTION

~~The challenged claims combine two basic concepts: (1) bookmarking a play-back position in an audio stream and (2) using a “descriptor file” to navigate among a plurality of different audio files that make up the stream. By the time of the patent’s earliest possible priority date in 2005, these concepts were widely known and had been widely implemented.~~

~~For example, Lindahl (2004) and Hanson (1996) disclosed downloading, playing, and bookmarking audio streams comprising multiple audio segments. By 2005, the industry had developed SMIL files—descriptor files used to organize and index media streams. The challenged claims merely combine these well known concepts. But it would have been obvious to a POSITA to use SMIL files to organize audio streams like those disclosed in Lindahl and Hanson because that was precisely why SMIL files were developed. The remaining elements of the challenged claims recite trivial, well known features common to many media rendering systems.~~

~~PO's claims should never have issued, and the Board should cancel them.~~

22. ~~BACKGROUND AND STATE~~

23. It is my understanding that the law recognizes several rationales for combining references or modifying a reference to show obviousness of claimed subject matter. Some of these rationales include:

- combining prior art elements according to known methods to yield predictable results;

- simple substitution of one known element for another to obtain predictable results;
- a predictable use of prior art elements according to their established functions;
- using known techniques to improve similar devices (methods, or products) in the same way;
- applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success (in which case a claim would have been obvious to try);
- known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; and
- 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.

24. I understand that “secondary considerations” must be considered as part of the obviousness analysis when present. I further understand that the secondary

considerations may include: (1) a long-felt but unmet need in the prior art that was satisfied by the claimed invention; (2) the failure of others; (3) skepticism by experts; (4) commercial success of a product covered by the patent; (5) unexpected results achieved by the claimed invention; (6) industry praise of the claimed invention; (7) deliberate copying of the invention; and (8) teaching away by others. I also understand that evidence of the independent and nearly simultaneous “invention” of the claimed subject matter by others is a secondary consideration supporting an obviousness determination and may support a conclusion that a claimed invention was within the knowledge of a person of ordinary skill as of December 13, 2005. I am not aware of any evidence of secondary considerations that would suggest that the claims of the '740 patent would have been nonobvious in December 2005.

25. I understand that when assessing obviousness, using hindsight is impermissible; that is, what is known today or what was learned from the teachings of the patent should not be considered. The patent should not be used as a road map for selecting and combining items of prior art. Rather, obviousness must be considered from the perspective of a person of ordinary skill at the time the alleged invention was made – December 2005 in this case.

26. I also understand that an obviousness analysis must consider the invention as a whole, as opposed to just a part or element of the invention. I understand this “as a whole” assessment to require showing that one of ordinary skill in the art

at the time of invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the elements from the prior art and combined them in the claimed manner.

I.III. PERSON OF ORDINARY SKILL IN THE ART

27. It is my understanding that when interpreting the claims of the '740 patent and evaluating whether a claim would have been obvious, I must do so based on the perspective of a person of ordinary skill in the art at the relevant priority date. I understand that the relevant priority date of the '740 patent is December 13, 2005.

28. I understand that in determining the level of ordinary skill in the art, several factors are considered. Those factors may include: (i) the type of problems encountered in the art; (ii) prior art solutions to those problems; (iii) the rapidity with which innovations are made; (iv) the sophistication of the technology; and (v) the educational level of active workers in the field. A person of ordinary skill in the art must have the capability of understanding the scientific and engineering principles applicable to the pertinent art.

29. The '740 patent describes the use of well-known technologies for the rendering and/or distribution of digital content. Based on my review of the specification and claims of the '740 patent, it is my opinion that a person of ordinary skill in the art would have had a minimum of a bachelor's degree in electrical engineering, computer engineering, or computer science, and at least three years of industry or

academic experience in the design, development, and/or implementation of content rendering and/or distribution systems. Work experience could substitute for formal education and additional formal education could substitute for work experience.

30. My conclusions below that the claims of the '740 patent would have been obvious would remain the same even if the priority date, field of endeavor, or level of ordinary skill were slightly different.

31. I meet the above definition of a person of ordinary skill in the art, and did so as of December 13, 2005. Also, I have worked with persons of ordinary skill in the art through my professional and academic experiences, and I have an understanding of their skill level around December 2005.

IV. TECHNOLOGY BACKGROUND

A. Determining the Position and Time Offset Within an Audio Stream Was Well Known.

~~1-32.~~ 32. Determining the position and time offset within an audio stream is a ~~prereq-uisite~~prerequisite to bookmarking that time offset. Determining the position and time offset was well known by 2005. ~~(EX-1002 ¶¶ 32-35.)~~

33. For example, DTB disclosed a <lastmark> element for identifying the position in an audiobook where the user most recently stopped playing the ~~audiobook~~audio- book using a time offset in the audio. (EX-1003, (DTB), 47-48; *see also id.*, 45 (“[o]ffsets from element boundaries in audio files shall be identified by <~~timeOffset~~timeOff-

| [set](#)> in fractional seconds”).)-

2.34. Hanson disclosed a “position detector” that tracks the position in an audio stream, including the position at which an audio stream is paused or stopped, using a timer. (EX-1033 (Hanson), 3:38-50, 4:52-53, 5:1-6.)
a timer. (EX 1033, 3:38-50, 4:52-53, 5:1-6; EX 1002 ¶34.)

Lindahl similarly disclosed an audiobook device with a timer that “recordrec-
ord[ed] the elapsing time” as the audio played to determine the position of the audiobookaudi- obook, including the position at which the audiobook is paused or stopped. (EX-1004

3.35. (Lindahl) ¶¶[0035]-[0037]; EX 1002 ¶35.].)

B. Audio Stream Bookmarks Were Well Known.

Bookmarks for audio streams were also well known by 2005. (EX 1002 ¶36.)
DTB disclosed that a reader can “set bookmarks [] at any point” in an audiobook “based on the audio file[.]” (EX-1003; (DTB), 45 (“[o]ffsets from element boundaries in

4.36. audio files shall be identified by <timeOffset> in fractional seconds”).)

Many other references, including Sull, Dimitrova, Hanson, and Lindahl, also disclosed book- marks within an audio stream. (EX-1005 ([Sull](#)) ¶[0175] (“a bookmarked position such as elapsed time”); EX-1069, ([Dimitrova](#)), 3:14-17; EX-1033, ([Hanson](#)), 4:52-53, 5:1-5 (bookmark included “the actual elapsed time of the audio program,” that is “the number of minutes and seconds” the user progressed into a book); EX-1004 ([Lindahl](#)) ¶[0035] (a “timer records the elapsing time so that a bookmark may be created [] which contains information on the time at which the user paused play”).)

C. Storing Audio Streams as a Plurality of Audio Files Was Well Known.

Storing audio streams as a plurality of audio files was also well known by 2005. (~~EX-1002 ¶37.~~) Prabhakaran—a textbook from 1996—disclosed a ~~multime-~~
~~dia~~multimedia database storing audio clips comprising an audio stream. (EX-1026,
(Prabhakaran), 177, 207, Fig. 1;~~EX-1002 ¶37.~~) Heckerman, Gupta, Lindahl, and
Hanson also disclosed audio streams stored as a plurality of audio files. (EX-~~1002~~
~~¶37 (citing EX-1030, (~~Heckerman~~), 5:40-48 (“plurality of [] audio files [] represents~~
a complete audio version of the exemplary work”), claim 22, Fig. 6; EX-1061,
(Gupta), 2:9-11, 3:58-62; EX-1004 (Lindahl) ¶¶[0018] (audiobooks ~~segmented~~seg-
mented “into two or more specific sub-portions ... within each of the larger [~~au-~~
~~diobook~~audio- book] files; the sub-portions being individually searchable and
retrievable from the larger parent file” stored on a server), [0017], Fig. 1; EX-1033,
(Hanson), 2:3-16 (“audio

5.37. content (program) database” accessible via Internet), 2:59-62, 6:30-34, claims 8, 20 (audio divided into discrete blocks), Fig. 2A).)

D. Descriptor Files for Ordering and Identifying Media Content Files Were Well Known.

38. By 2005, descriptor files for ordering and identifying media content files were well known. (~~EX-1002 ¶38.~~) For example, Hay disclosed “a linking file 13 linking time signatures of the pre-recorded audio narration with locations within the ~~elec-tronic~~electronic text[.]” (EX-1028 (Hay) ¶[0180].) Chang similarly disclosed a file containing “in- formation regarding the locations of the audio and image files and the times for ~~dis-~~playing

displaying the images.” (EX-1074, (Chang), 5:15-18.) SMIL files were widely used to “define[] the sequence of playback for one or more media objects” and included “Uniform Resources Identifiers” to identify audio, text, and image resources. (EX-1003, (DTB), 21–34; *see also* EX-1007, (Bulterman), 141-47.)

E. Audio Players that Download and Play Media Files Were Well Known.

~~6.39.~~ Audio players that download and play media files were also well known by 2005. ~~(EX-1002 ¶39.)~~ For example, DTB disclosed a “playback device” that ~~down-loaded~~downloaded and played multimedia presentations. (EX-1003, (DTB), Abstract (“DTB playback ~~device~~”; ~~EX-1002 ¶39.)de- vice~~”). Hay, Chang, Lindahl, and Hanson also disclosed audio players that ~~downloaded~~down- loaded and played media files. (EX-1028, (Hay), Abstract, ¶[0185]; EX-1074, (Chang), 5:10-6:48 (player could render downloaded image and audio files); EX-1004 (Lindahl) ¶[0033] (downloaded file “may be played”); EX-1033 (Hanson), 5:61-6:6 (“playback module then begins to play the program from the bookmark”).)

~~EX-1004 ¶¶0033} (downloaded file “may be played”); EX-1033, 5:61-6:6 (“play-back module then begins to play the program from the bookmark”); EX-1002 ¶39.)~~

H.V. THE '740 PATENT

A. Overview

40. The '740 patent relates to the use of bookmarks in an audio stream that is segmented into smaller files. (EX-1001, (‘740 patent), 2:33-67, 4:64-6:4.) The smaller files can be delivered to a client device and an index file (sometimes referred to as a “virtual audio stream descriptor”) can be used to reassemble the smaller files and render the audio stream at the client. (*Id.*) Bookmarks can be used to identify-

an audio stream and a position within the audio stream, which enables users to pick up where they left off. (*Id.*, 8:36-39.) When a user loads a bookmark, the system uses the time offset of the bookmark, along with the descriptor, to select the ~~appropriate~~appro- priate smaller audio file for playback. (*Id.*, 8:23-26.) If the file is not already in local storage, it is downloaded. (*Id.*, 14:62-65.)

B. Claims

~~Claims 12-17 are challenged in this petition. Of these, claim 12 is the sole independent claim. It in that group, is representative and~~I have been asked to consider claims 12-17 Declaration. Claim 12 is, the sole independent claim. It in that group, is representative and recites:

~~7.41. 12. A~~ a “non-transitory computer readable storage medium including computer readable code, which when executed by a computer, causes said computer to” perform several steps:

[a] determine a first position within an audio stream playing on a media player;

- [b] determine a time offset using a point in time of the first position
from a beginning of the audio stream;
- [c] create a bookmark for the first position, the bookmark including a
file, the file including a unique identifier for identifying the audio
stream and including the time offset;
- [d] wherein the bookmark is for positioning the audio stream to the first
~~posi-tion~~position using the time offset;

[e] wherein the audio stream is stored as a plurality of digital audio files in a library, each digital audio file including a different segment of the ~~au-dio~~audio stream, and wherein the computer code is further configured to cause said computer to:

[f] determine a first digital audio file from the plurality of digital audio files to be loaded for playback with the media player from the first position, the first digital audio file selected using the time offset and a ~~de-scriptor~~descriptor file, the descriptor file for ordering the plurality of digital ~~au-dio~~audio files and including at least one of a start time, an end time, and a play time of each digital audio file in the plurality of digital audio files within the audio stream;

[g] determine if the first digital audio file is resident within the computer;

[h] download the first digital audio file from the library in dependence upon whether the first digital audio file is already resident within the ~~com-puter~~computer; and

[i] load the first digital audio file for playback with the media player from the first position.

~~A.~~ Prosecution

~~The language of the challenged claims was introduced via preliminary amendment on the same day PO filed the application for the '740 patent. (EX-1095, 211-18.) Independent claim 12 (claim 58 during prosecution) originally included only limitations [a] [d]. (See *id.*) In the first office action, that claim was rejected as~~

~~obvious. (*Id.*, 109–38.) In response, PO added limitations [e] [i] from a dependent claim that was indicated to be allowable. (*Id.*, 137, 102–03.) Following that amendment, claim 12 and its remaining dependent claims issued. (*Id.*, 8.)~~

~~B. — Priority~~

~~The patent’s earliest possible priority date is December 13, 2005. (EX-1001, 1.)~~
~~Petitioners do not concede that the claims are entitled to that priority date.~~

~~H. — LEVEL OF ORDINARY SKILL IN THE ART~~

~~A POSITA is “a person of ordinary creativity, not an automaton.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). Here, a POSITA would have had at least a bachelor’s degree in electrical engineering, computer engineering, or computer science, and at least three years of industry or academic experience in the design, development, and/or implementation of content rendering and/or distribution systems. (EX-1002 ¶¶27–31); see *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995).~~

VI. CLAIMS 12-17 OF THE '740 PATENT WOULD HAVE BEEN OBVIOUS.

A. Claims 12-14 and 16-17 Would Have Been Obvious in View of Lindahl, DTB, and Yoshimura.

42. For at least the reasons I discuss below, Lindahl, DTB, and Yoshimura render claims 12-14 and 16-17 obvious.

~~Work experience could substitute for formal education and additional formal education could substitute for work experience. (EX 1002 ¶29.)~~

III. CLAIM CONSTRUCTION

~~No claim terms require construction to resolve the obviousness challenges here. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Ltd.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017); *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795,~~

~~803 (Fed. Cir. 1999). For this proceeding only, Petitioners assume the claims are not invalid as indefinite under §112.~~

~~IV. STATEMENT OF PRECISE RELIEF REQUESTED~~

~~A. Grounds~~

~~The Board should cancel claims 12-17 as obvious under 35 U.S.C. §103 on the following Grounds:~~

~~Ground~~	~~Challenged Claims~~	~~References~~
~~1A~~	~~12-14, 16-17~~	~~Lindahl, DTB, and Yoshimura~~
~~1B~~	~~15~~	~~Lindahl, DTB, Yoshimura, and Sull~~
~~2A~~	~~12-14~~	~~Hanson, Yoshimura, Bulterman, and Fredrickson~~
~~2B~~	~~15-17~~	~~Hanson, Yoshimura, Bulterman, Fredrickson, and Sull~~

~~Additional support is included in the Declaration of Professor Ketan Mayer-Patel, PhD. (EX-1002.)~~

~~B. Status of References as Prior Art~~

~~Each of the following references is prior art under pre-AIA 35 U.S.C. §102(b) because it published more than one year before the '740 patent's earliest possible priority date of December 13, 2005: Lindahl (September 29, 2004); DTB (2002); Sull (2002); Hanson (1999); Yoshimura (2003); and Bulterman (August 2004). (EX-1004, 1; EX-1005, 1; EX-1033, 1; EX-1097 ¶¶49-71.) Fredrickson is prior art~~

~~under at least pre-AIA 35 U.S.C. §102(e) because it is an issued patent filed on June 30, 2004. (EX-1034, 1.)~~

~~These references are analogous art because they are from the same field of endeavor as the '740 patent, e.g., content distribution and/or rendering. (EX-1002 ¶22); *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 995, 1000 (Fed. Cir. 2016). They are also pertinent to a particular problem the inventor was focused on, e.g., efficient and effective distribution and/or rendering of content. (*Id.*)~~

~~V. GROUND 1A: CLAIMS 12-14 AND 16-17 WOULD HAVE BEEN OBVIOUS IN VIEW OF LINDAHL, DTB, AND YOSHIMURA.~~

8.43. As shown in Figure 2 below, Lindahl discloses rendering a segmented audio stream including determining a position and time offset while the audio is playing (elements 12[a] and 12[b]), creating a bookmark including the time offset (element 12[c]), positioning the audio stream using the bookmark (element 12[d]), ~~determin-~~ingdetermining if the file containing the bookmark is resident on the client device (~~element~~ele- ment 12[g]) and, if not, downloading the file containing the bookmarked position (element 12[h]) for playback (element 12[i]).~~(EX-1002 ¶43.)~~

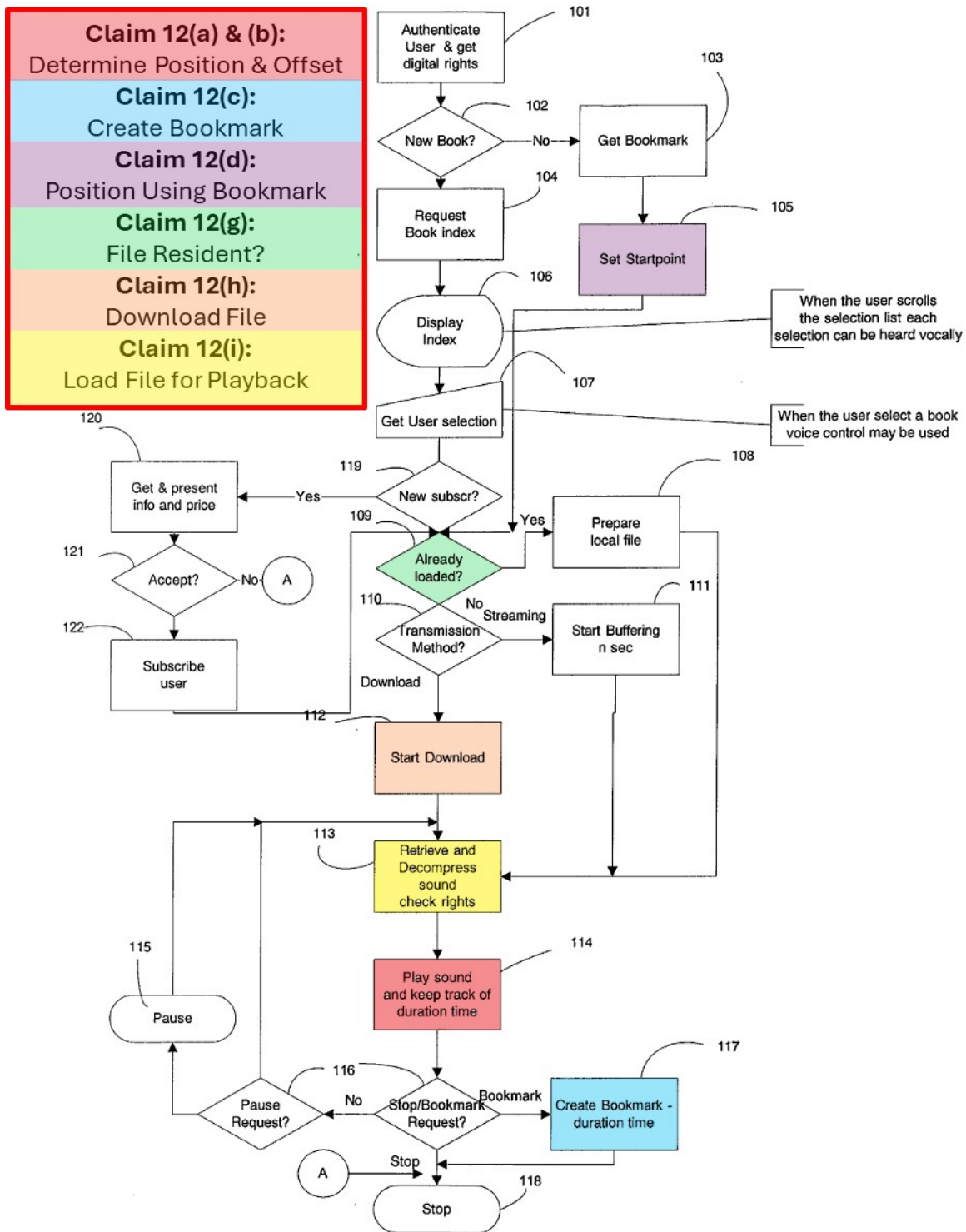


Figure 2

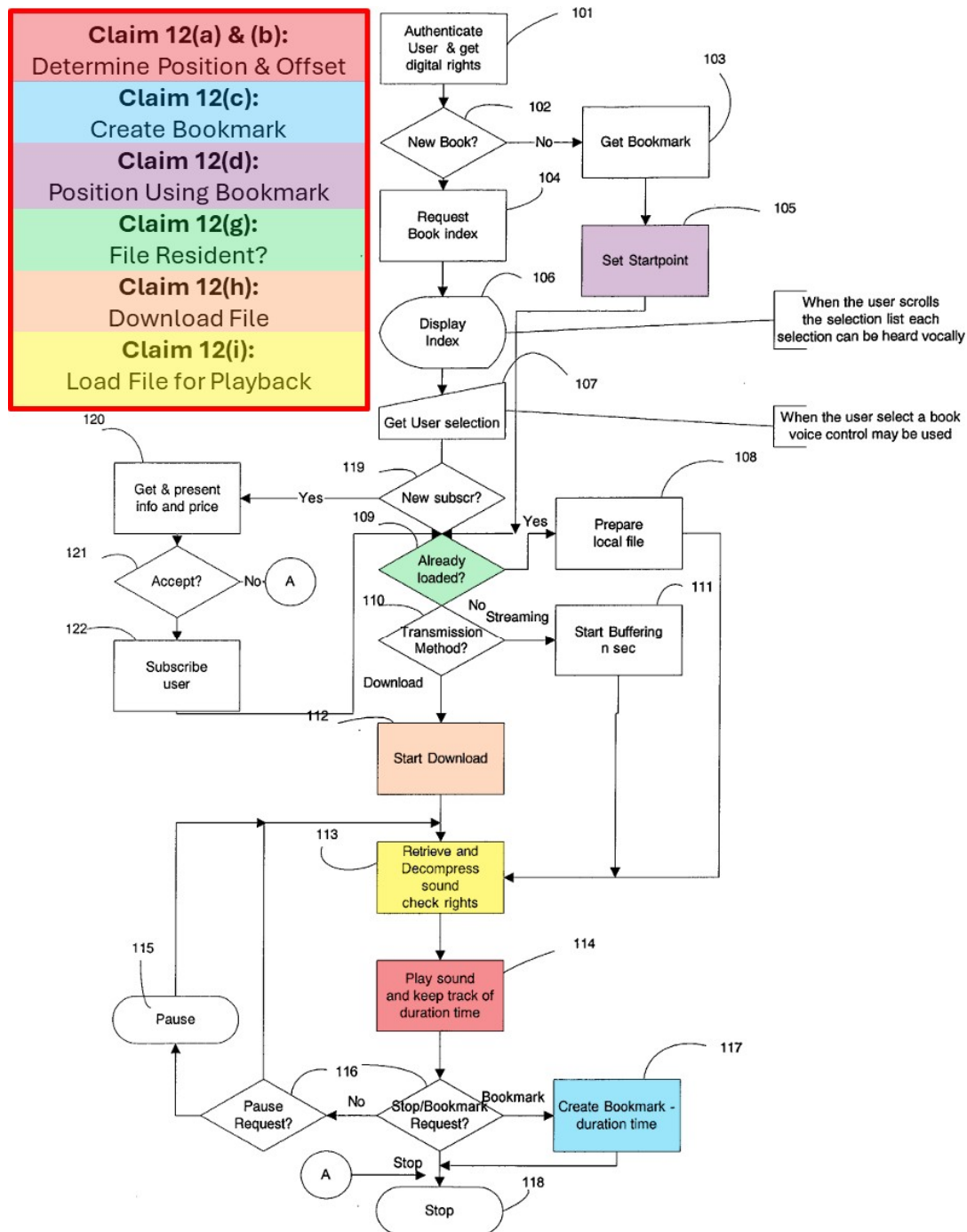


Figure 2

(EX-1004, (Lindahl), Fig. 2¹; EX-1002 ¶432¹.)

¹ Figures in this Declaration may be colored and/or annotated for clarity.

9.44. While Lindahl does not explicitly disclose using a descriptor file for indexing the plurality of audio files (elements 12[e] and 12[f]), it discloses “~~administrative~~admin- istrative interaction” with the files to provide searching and retrieval of individual audio files in the stream. (EX-1004 (Lindahl) ¶[0018], claims 15, 18; ~~EX-1002- ¶44.~~) It would have been obvious to a ~~POSITA~~person of ordinary skill in the art to perform Lindahl’s “~~administrativead- ministrative interaction” using a SMIL file and a bookmark file to index the files and to determine an audio file at a particular location (elements 12[e] and 12[f]). (See generally EX-1003; (DTB); EX-1006; ~~EX-1002- ¶44.)~~ (Yoshimura).)~~

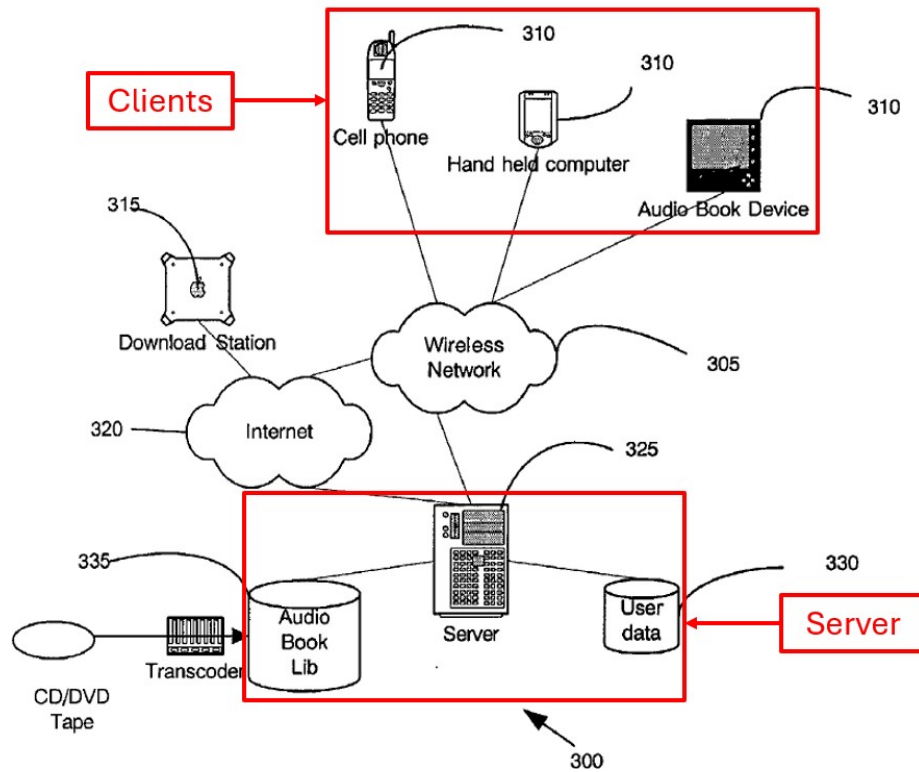
1. Claim 12

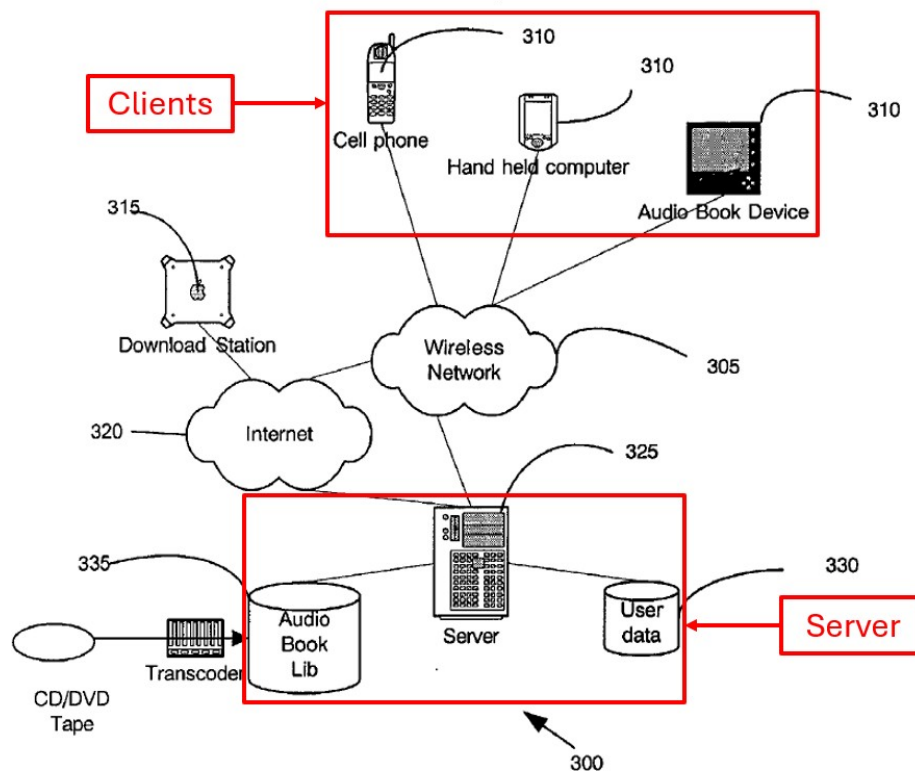
a. Preamble

~~10.45. Claim~~ The preamble of claim 12 recites “[a] ~~“non-transitory~~ computer readable storage medium ~~in- cluding~~including computer readable code, which when executed by a ~~computer~~com- puter, causes said computer to” perform the claim limitations. Lindahl discloses or renders obvious such a storage medium.

~~11.46.~~ Lindahl’s system includes a server with an audiobook library and a ~~client de- vice~~cli- ent device such as a cell phone, computer, or audiobook device, as shown in Figure 1:

⁺~~Figures herein may be colored and/or annotated for clarity.~~





(EX-1004; Lindahl, Fig. 1, ¶¶[0016]-[0017], [0043].) The server and each client device ~~con-tains~~contains computer readable code on a non-transitory storage medium. (*Id.*, 1, ¶¶[0010]–[0011], [0022], [0025], [0030]-[0038], Figs. 2-3; ~~EX-1002~~ ¶46.)

~~Accordingly, to the extent the preamble is limiting, it is disclosed or rendered obvious by Lindahl. (EX-1002 ¶¶45-47.)~~

47. Thus, Lindahl discloses or renders obvious the preamble of claim 12.

a. Element 12[a]: Determining a First Position

12.48.Element 12[a] recites “determin[ing] a first position within an audio stream playing on a media player.” Lindahl discloses this claim element.

Lindahl's client renders audiobooks. (EX-1004 (Lindahl ¶¶[0030]-[0031],
[0035]; ~~EX-1002 ¶49.)~~.) "As the book is being played, a timer is recording the
elapsing time."

49. ~~(EX-1004~~ (Id. ¶[0035].) The elapsed time determines the position within
the

audiobook. (*Id.* ¶¶[0035]-[0037]; ~~EX-1002 ¶49.)~~) Lindahl discloses determining a first position, for example, “the time at which the user paused play” (~~EX-1004~~*id.* ¶[0035]) or the time at which the user stops play (*id.* ¶[0036]). The client device determines this position to create or set a bookmark, which enables the user to later resume play at that position. (*Id.*) This disclosure is the same as in the ’740 patent, (EX-1001, (’740 patent), 7:34-61 (downloading an audio stream), 15:35-47 (“current position in the actual audio stream is tracked”), 15:56-65 (“[I]f the media player is stopped, a bookmark is ~~ere—ated~~created and stored. The bookmark identifies the audio stream and the time offset of the bookmarked position.”); ~~EX-1002 ¶49.)~~.)

~~13-50.~~ Lindahl therefore discloses determining a first position (e.g., pause or stop position) within an audio stream (e.g., audiobook) playing on a media player (e.g., computer, cell phone, audiobook device). (~~EX-1002 ¶48-50.)~~ Thus, Lindahl discloses claim element 12[a].

a. Element 12[b]: Determining a Time Offset

~~14-51.~~ Element 12[b] recites “determin[ing] a time offset using a point in time of the first position from a beginning of the audio stream.” Lindahl discloses this claim element.

~~15-52.~~ Lindahl discloses that, when a user pauses or stops the audiobook and creates a bookmark, the device timer records the elapsed time, which “is an offset relative to the beginning of the book.” (~~EX-1004 ¶[0035].) Lindahl therefore discloses de-~~

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~~termining a time offset using a point in time of the first position (e.g., point in time~~(EX-1004 (Lindahl)

~~¶[0035].)~~ Lindahl

therefore discloses determining a time offset using a point in time of the first position (e.g., point in time indicated by the timer for the pause or stop position) from the beginning of the audio stream (e.g., audiobook). ~~(EX-1002 ¶¶51-52.)~~ Thus, Lindahl discloses claim element 12[b].

a. Element 12[c][i]: Creating a Bookmark

~~16.53.~~ Element 12[c][i] recites “creat[ing] a bookmark for the first position.” Lindahl discloses this claim element.

54. Lindahl discloses that the client device “create[s] a bookmark ~~associated~~ associ- ated with the recorded time at which the user paused play[.]” (EX-1004 (Lindahl) ¶[0036]; *id.* ¶¶[0035] (“bookmark may be created”), [0036] (bookmark may be set), [0044] (invention ~~pro- vides~~ provides ability to “create a bookmark”), [0017], [0022], [0031], [0040]-[0041], claimsclaim 16, 19.) Accordingly, Lindahl discloses creating a bookmark for the first position (e.g., position indicated by the timer when the user paused play). ~~(EX-1002 ¶¶53-54.)~~ Thus, Lindahl discloses claim element 12[c][i].

a. Element 12[c][ii]: The Bookmark Including an Identifier and the Time Offset

~~17.55.~~ Element 12[c][ii] recites that “the bookmark include[s] a file, the file ~~includ- ing~~ including a unique identifier for identifying the audio stream and including the time offset.” Lindahl and/or DTB disclose or render obvious this claim element.

i. Lindahl

Lindahl’s bookmarks are stored on the server in user data storage (~~referred~~referred to as “user datastore”) as a “bookmark file containing pointers associated with the ~~pas-sage~~passage [a user] last listened to for each ~~audio-book~~audiobook [a user is] currently reading (i.e. for each recording of a reading of a book which they have subscribed to listen to).” (EX-1004 (Lindahl) ¶[0017]; *see also id.* ¶¶[0035], [0041] (“server proceeds to set a bookmark

221 associated with the time at which the reading of the ~~audio book~~audiobook was stopped, and then sends this bookmark to the user data store 330, for retrieval during a later session”).) The bookmarks also contain a time “offset relative to the beginning of the book” (*id.* ¶[0035]) and are “linked to books that the user has ~~subscribed~~sub- scribed to” (*id.*

~~18-56.~~ ¶[0017]). (See *supra* §VII.A.3; ~~EX-1002 ¶56~~ ¶¶51-52, above.) Thus, Lindahl discloses that the bookmark file includes a unique identifier (e.g., pointer or “link”) for identifying the audio stream (e.g., audiobook) and the time offset (e.g., time where play stopped). (~~EX-1002 ¶56.~~)

~~Even I note that even~~ if Lindahl did not disclose that the bookmark file ~~includes in-~~cludes a unique ~~iden- tifier~~identifier for the audio stream, it would have been obvious to a ~~POSITA~~per- son of ordinary skill that the ~~book- mark~~bookmark must somehow identify the audiobook (audio stream) to which it pertains and is linked. (~~Id.~~ ¶57.) Thus, this limitation would also have been obvious in view of ~~Lin- dahl.~~ (~~Id.~~ ¶¶56-57.)

a. —DTB

57. ~~Even if Lindahl did not disclose or render obvious this limitation, it,~~

ii. DTB

This claim element also would have been obvious in view of DTB. ~~(Id. ¶58.)~~

DTB is a standard developed in 2002 for creating, distributing, and rendering digital talking books. (EX-1003; (DTB), Abstract; ~~EX-1002 ¶58.~~) DTB discloses a bookmark file that contains “the title, *a unique identifier of the book*, the last place the reader left off [referred to as a “*lastmark*”] and zero or more bookmarks, highlights, and associated audio or textual notes.”

~~19.58.~~(~~EX-1003~~, *Id.*, 117 (emphasis added), 45, 50;~~EX-1002-¶58.~~) When the digital talking book includes audio, the *bookmark* and *lastmark* ~~attributes~~²attributes² (collectively referred to herein as “marks”) also include a *timeOffset* attribute that identifies the “[e]xact po- sition of [mark] in audio file referenced (via the SMIL file) by the URI; in seconds, measured from [the] beginning of audio file.” (~~EX-1003~~,*Id.*, 47.) A sample DTB ~~book-mark~~bookmark file is provided below:

² These I italicize these and similar terms ~~are italicized herein~~ where they appear in this Declaration for clarity.

“bookmark”

```
<?xml version="1.0" encoding="UTF-8" ?>
<!DOCTYPE bookmarkSet SYSTEM "bookmark100.dtd">

<bookmarkSet>

  <title>
    <text>Gone with the Wind</text>
    <audio src="gtw_title.mp3" />
  </title>
  <uid>us-rfbd-JT065</uid> ◀ “identifier”

  <lastmark>
    <ncxRef>gtw.ncx#lvl1_5</ncxRef>
    <uri>gtw_ch5.smil#para023</uri>
    <timeOffset>173</timeOffset>
  </lastmark>

  <bookmark>
    <ncxRef>gtw.ncx#lvl1_1</ncxRef>
    <uri>gtw_ch1.smil#para008</uri>
    <timeOffset>22</timeOffset>
  </bookmark>
  <bookmark>
    <ncxRef>gtw.ncx#lvl1_3</ncxRef>
    <uri>gtw_ch3.smil#para012</uri>
    <timeOffset>88</timeOffset>
    <note>
      <text>Atlanta burns.</text>
    </note>
  </bookmark>

  <hilite>
    <hiliteStart>
      <ncxRef>gtw.ncx#lvl1_4</ncxRef>
      <uri>gtw_ch4.smil#para001</uri>
      <timeOffset>0</timeOffset>
    </hiliteStart>
    <hiliteEnd>
      <ncxRef>gtw.ncx#lvl1_4</ncxRef>
      <uri>gtw_ch4.smil#para006</uri>
      <timeOffset>246</timeOffset>
    </hiliteEnd>
    <note>
      <audio src="us-rfbd-JT065.wav" clipBegin="00:00.00"
        clipEnd="00:10.00" />
    </note>
  </hilite>

</bookmarkSet>
```

“bookmark”

```
<?xml version="1.0" encoding="UTF-8" ?>
<!DOCTYPE bookmarkSet SYSTEM "bookmark100.dtd">

<bookmarkSet>

    <title>
        <text>Gone with the Wind</text>
        <audio src="gwtw_title.mp3" />
    </title>
    <uid>us-rfbd-JT065</uid> ← “identifier”

    <lastmark>
        <ncxRef>gwtw.ncx#lv11_5</ncxRef>
        <uri>gwtw_ch5.smil#para023</uri>
        <timeOffset>173</timeOffset>
    </lastmark>

    <bookmark>
        <ncxRef>gwtw.ncx#lv11_1</ncxRef>
        <uri>gwtw_ch1.smil#para008</uri>
        <timeOffset>22</timeOffset>
    </bookmark>
    <bookmark>
        <ncxRef>gwtw.ncx#lv11_3</ncxRef>
        <uri>gwtw_ch3.smil#para012</uri>
        <timeOffset>88</timeOffset>
        <note>
            <text>Atlanta burns.</text>
        </note>
    </bookmark>

    <hilite>
        <hiliteStart>
            <ncxRef>gwtw.ncx#lv11_4</ncxRef>
            <uri>gwtw_ch4.smil#para001</uri>
            <timeOffset>0</timeOffset>
        </hiliteStart>
        <hiliteEnd>
            <ncxRef>gwtw.ncx#lv11_4</ncxRef>
            <uri>gwtw_ch4.smil#para006</uri>
            <timeOffset>246</timeOffset>
        </hiliteEnd>
        <note>
            <audio src="us-rfbd-JT065.wav" clipBegin="00:00.00"
            clipEnd="00:10.00" />
        </note>
    </hilite>

</bookmarkSet>
```

(*Id.*, 49-50.)

~~20.59.~~DTB therefore discloses or renders obvious a bookmark including a file, the file including a unique identifier (e.g., *uid*) for identifying the audio stream (e.g., via the associated book). ~~(EX-1002 ¶¶58-59.)~~

ii.iii. Motivation to Combine

~~21.60.~~A ~~POSITA~~person of ordinary skill in the art would have been motivated to ~~include~~in- clude a unique identifier of the book (e.g., as disclosed in DTB)—which is also a unique identifier of the audio stream—in the bookmark file of Lindahl for multiple reasons. (EX-1003, (DTB), 46; ~~EX-1002 ¶¶60-63.~~)

First, Lindahl teaches that the bookmark file includes “pointers ~~associated~~associ-
ated with” passages of a bookmarked ~~audiobook~~audio book. (EX-1004 (Lindahl) ¶[0017].) Similarly, Lindahl discloses that the bookmarks are “linked to books.” (*Id.*) ~~A POSITA~~A
per- son of ordinary skill would have understood that a unique identifier (such as the *uid* in DTB) would assist in pointing to the book or otherwise linking the bookmark with the associated book. ~~(EX-1002~~

~~22.61. ¶61.)~~—Moreover, storing Lindahl’s bookmark on a server and ~~allowing~~allow- ing bookmarks for multiple books to be stored there would further have motivated a ~~POSITA~~person of ordinary skill to include a unique identifier in the bookmark file in order to properly associate the bookmark with the book and avoid confusion. ~~(EX-1004 ¶¶[0036], [0040], [0031], [0017]; EX-1002 ¶61.)~~(Id.
¶¶[0036], [0040], [0031], [0017].)

62. Second, the combination represents the simple addition of known ~~elements~~ele- ments (e.g., bookmark files containing a unique identifier for the book) to another–

known

element (e.g., Lindahl’s bookmark with a time offset from the beginning of the ~~audio~~ audio) to obtain a predictable result (e.g., bookmark files containing a unique identifier for the book and a time offset from the beginning of the audio). (~~EX-1002 ¶62~~); ~~KSR, 550 U.S. at 417.~~

Third, the combination represents the use of known techniques (e.g., a unique identifier to link the bookmark to a book) to improve a similar device and method (e.g., Lindahl’s bookmark) in the same way. (~~Id.~~)

Fourth, the combination applies a known technique (e.g., using a unique ~~identifier~~ identifier to reference a book) to a known device and method (e.g., Lindahl’s bookmark system) that is ready for improvement and yields ~~predictable~~ predict- able results (e.g., a ~~book-mark~~ bookmark that references a book with a unique identifier). (~~Id.~~)

~~23.63.A POSITA~~ A person of ordinary skill in the art would have reasonably expected success in modifying Lindahl’s bookmark file to include a unique book identifier (as taught by DTB) for the reasons listed above. (~~EX-1002 ¶63.~~) Moreover, Lindahl explains that its invention is “adapted for use with the DAISY ~~audio-book~~ audiobook standard[.]” (EX-1004 (Lindahl) ¶[0025].) The name DAISY (Digital Accessible Information System) is ~~used to refer to a set of~~ used to refer to a set of related standards, one of which is DTB. (EX-1003, (DTB), xii; ~~EX-1002 ¶63.~~) This ~~diselo-~~ sure disclosure provides a reasonable

expectation of success and is also an additional ~~motiva-
tion~~motivation to
combine because it provides an express teaching or ~~suggestions~~sugges-
tion in
support of the combination. ~~(Id.)~~

~~24.64.~~ Lindahl, either alone or in combination with DTB, therefore renders obvious a bookmark including a file, the file including a unique identifier (e.g., ~~pointer, uid, and/or uri~~) for identifying the audio stream (e.g., ~~audiobook~~) and including the time offset (e.g., ~~offset identified by timer~~). (EX-1002 ¶¶ 55-64.)

pointer, uid, and/or uri) for identifying the audio stream (e.g., audiobook)
and in- cluding the time offset (e.g., offset identified by timer).

iii.iv. File Structure

~~25.65.~~ I understand the ~~extent PO argues~~ Patent Owner may argue that the claim requires the bookmark to be a structure that is separate from the file it includes. In that case, such structure would have been obvious. ~~(Id. ¶¶65-71.)~~
For example, it would have been obvious to store the bookmark as a folder containing the claimed file, for several reasons.

~~26.66.~~ First, modifying file structures was routine to a ~~POSITA~~ person of ordinary skill and including the required file within a bookmark folder was one of a finite number of obvious ~~struc- tures~~ structures for the bookmark. ~~(Id. ¶66.)~~

~~27.67.~~ Second, ~~POSITA~~ persons of ordinary skill understood that folders aid in file ~~organization.~~ ~~(Id. ¶67.)~~ or- ganization. They reduce clutter in a file system and improve navigation. ~~(Id.)~~

~~28.68.~~ Third, the combination represents the simple addition of known ~~elements~~ ele- ments (e.g., a folder) to another known element (e.g., Lindahl's bookmark file) to obtain a predictable result (e.g., a file in a bookmark folder). ~~(Id. ¶68); KSR, 550 U.S. at 417.~~

Fourth, the combination represents the use of known techniques (e.g., creating a file in a folder) to improve a similar device and method (e.g., Lindahl's bookmark

file) in the same way. (~~*Id.* ¶69~~); ~~*KSR*, 550 U.S. at 417~~.

69. Fifth, the combination applies a known technique (e.g., creating a file in a folder) to a known device and method (e.g., Lindahl's-

bookmark system) that is ready for improvement and yields predictable results (e.g., bookmark folder with file containing book identifier and time offset). ~~(Id.)~~

~~29-70.~~ A ~~POSITA~~ person of ordinary skill would also have had a reasonable expectation of success in ~~creat-ing~~ creating a folder with a file containing a unique identifier of the book and a time offset for each mark in Lindahl’s bookmark at least because modifying file structures was routine, conventional, and well-known to ~~POSITAs.~~ ~~(Id. ¶70.)~~ persons of ordinary skill.

71. Thus, Lindahl and/or DTB disclose or render obvious claim element 12[c][ii].

a. **Element 12[d]: The Bookmark for Positioning the Audio Stream**

~~30-72.~~ Element 12[d] recites that the “bookmark is for positioning the audio stream to the first position using the time offset.” Lindahl discloses or renders obvious this claim element.

Lindahl discloses that the bookmark reflects “the point in the book where the user had paused reading” and that the bookmark is used to determine “the starting point ~~for the~~ current ~~audio reading session.~~” —(EX-1004 (Lindahl) ¶[0031]; ~~see also id.~~

~~31-73.~~ ¶[0035] (device “initiates play of the audio book ... from the point as determined by the stored bookmark”), [0036] (bookmark is for resuming the audio book at a later date from the point in the book where the user stopped), [0040] (the

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~~“starting point” may be “the place as indicated by the selected bookmark”), [0041], [0030], claims 16, 19,
Fig. 2 (blocks 103 (Get Bookmark), 105 (Set Startpoint)); EX 1002~~

“starting point” may be “the place as indicated by the selected bookmark”), [0041],

[0030], claims 16, 19, Fig. 2 (blocks 103 (Get Bookmark), 105 (Set Startpoint~~¶73.-))~~)).
The bookmark positions the audio stream to the appropriate point using the

time offset. (~~EX-1004~~Id. ¶¶[0035] (bookmarked position is “an offset relative to the beginning of the book”), [0036]; ~~EX-1002 ¶73.)~~.)

~~32.74.~~ Accordingly, Lindahl discloses or renders obvious that the bookmark is for positioning the audio stream (e.g., audiobook) to the first position (e.g., position identified by the timer when the user paused play) using the time offset. (~~EX-1002~~Thus, Lin- dahl discloses or renders obvious claim element 12[d]. ~~¶¶72-74.)~~)

a. **Element 12[e]: The Audio Stream Is Stored as a Plurality of Digital Audio Files**

~~33.75.~~ Element 12[e] recites that “the audio stream is stored as a plurality of digital audio files in a library, each digital audio file including a different segment of the audio stream.” Lindahl discloses this claim element.

Lindahl’s audiobooks are stored in an audiobook library on a server. (~~EX-1004~~ (Lindahl) ¶[0017], Fig. 1; ~~EX-1002 ¶76.)~~) The audiobooks are segmented “into two or more specific sub-portions ... within each of the larger [audiobook] files; the sub- portions being individually searchable and retrievable from the larger parent file.” (~~EX-1004~~Id. ¶[0018]; *see also id.* ¶¶[0006], [0010], [0015], [0022]-[0023], [0001], 1,

~~34.76.~~ claims 1, 4, 15, 18; ~~EX-1002 ¶76.)~~ In one embodiment, the book is divided into a plurality of audio files where each file represents a chapter of the book such that Lindahl’s “[t]ransmission ~~may be ... a selective download of an audio file of a chap- ter...~~” (~~EX-1004 ¶¶[0022] [0023]; EX-1002 ¶76.)~~)

may be ... a selective download of an audio file of a chapter...” (Id. ¶¶[0022]-[0023].)

35-77.Lindhahl therefore discloses that the audio stream (e.g., audiobook) is stored (e.g., on a server) as a plurality of digital audio files (e.g., chapter files) in a library (e.g., audiobook library), each digital audio file including a different segment (e.g., chapter) of the audio stream (e.g., audiobook). ~~(EX-1002 ¶¶75-77.)~~ Thus, Lindahl discloses claim element 12[e].

a. Element 12[f][i]: Determining a First Digital Audio File

36-78.Element 12[f][i] recites “determin[ing] a first digital audio file from the ~~plu-rality~~plurality of digital audio files to be loaded for playback with the media player from the first position.” Lindhahl discloses or renders obvious this claim element.

37-79.Lindhahl discloses that, when a user requests to resume an audiobook from a bookmark, the system determines the “starting point for the current audio reading session,” which includes determining the audio file containing the ~~bookmarked po-sition.~~book- marked position. (EX-1004 (Lindhahl) ¶¶[0031] (system checks whether the ~~requested~~re- quested audio file is on local memory), [0033] (audio file transmitted to client if not already in memory), [0022] (“[t]ransmission may be ... a selective download of an audio file of a chapter of a selected book”), [0023] (chapter-by-chapter download), [0033] (same), [0040] (determining position indicated by the

bookmark and ~~transmitting audiobook from that point on a chapter-by-chapter basis); EX-1002~~

~~¶79.)trans-~~

~~mitting audiobook from that point on a chapter-by-chapter basis).)~~

38.80. Lindahl therefore discloses or renders obvious determining a first ~~digital~~digi- tal audio file (e.g., chapter audio file) from the plurality of digital audio files (e.g., all audio files for the audiobook) to be loaded for playback with the media player (e.g., ~~client~~client) from the first position (e.g., position indicated by the timer at the book- marked location). Thus, Lindahl discloses or renders obvious claim element 12[f][i].

~~from the first position (e.g., position indicated by the timer at the bookmarked location).~~

~~(EX-1002 ¶¶78-80.)~~

i. **Element 12[f][ii]: The First Digital Audio File Is Selected Using the Time Offset and a Descriptor File**

~~39.81.~~Element 12[f][ii] recites “the first digital audio file selected using the time offset and a descriptor file, the descriptor file for ordering the plurality of digital audio files.” Lindahl, DTB, and/or Yoshimura together render obvious this claim element.

i. **Lindahl Discloses Selecting an Audio File Based on a Bookmarked Time Offset.**

As I discuss above, Lindahl discloses or renders obvious requesting, downloading, and playing a select audio file based on the time offset identified by the bookmark. (*Supra*

82. §VII.A.8; EX-1002 ¶82See ¶¶78-80, above.) Lindahl also discloses that the “segmentation of individual data files into two or more specific sub-portions requires an ~~administrative interaction~~administrative interaction with each of the stored data files so as to define specific sub-~~portions~~portions within each of the larger files; the sub-portions being individually searchable and ~~retrievable~~retrievable from the larger parent file.” (EX-1004 (Lindahl) ¶[0018], claims 15,-

18.) Lindahl does not, however, disclose the specifics of the mechanism that would enable the retrieval of a specific chapter file. ~~(EX 1002 ¶82.) A~~ ~~POSITA~~ A person of ordinary skill in the art would therefore have looked to references like DTB and Yoshimura to understand how chapter files, like those disclosed in Lindahl, could be effectively indexed for subsequent retrieval. ~~(Id.)~~

**ii. DTB Discloses Selecting an Audio File
Based on a SMIL File and a
Bookmark.**

~~40.83.~~ DTB indexes multimedia files using a descriptor file referred to as a “SMIL file.” (EX-1003, ~~(DTB)~~, 21 (“[a]udio files are indexed by time-based ~~positions~~posi- tions”), 21 (SMIL file “defines the sequence of playback for one or more media objects”), 22-34, 61 (disclosing “audio only” digital talking books); ~~EX-1002 ¶83.~~) SMIL files allow for the synchronization of audio and other media streams (e.g., image, video, text) using synchronization points or events referred to as “*sequences*” (which define the ~~se- quence~~sequence of media objects) and “*parallels*” (which define a group of media ~~objects~~ob- jects that are rendered at the same time). (~~EX-1003, Id.~~, 26; ~~EX-1002 ¶83.~~) “The DTB ~~pro- ducer~~producer determines the granularity of the synchronization events.” (~~EX-1003, Id.~~, 21.)

~~41.84.~~ DTB’s bookmark includes a *uid* of the book, a time offset, and a *uri* ~~identify- ing~~identifying the *parallel* or *sequence* (in a SMIL file) associated with the marked content. (EX-1003, ~~(DTB)~~, 45-50; ~~EX-1002 ¶84.~~) Each *parallel* or *sequence* in the SMIL file pro- vides the order of the audio segments to be rendered and contains a pointer and a *uri* ~~to the audio file associated with that parallel or sequence.~~ (~~EX-1003, 27; EX-1002~~

to the audio file associated with that *parallel* or *sequence*. (§84.)*Id.*, 27.) DTB discloses that the SMIL file (descriptor file) orders a plurality of audio files. (See, e.g., EX-1003;*id.*, 33-34 (providing example that orders audio files “rs_fwdx.mp3” and “rs_notes.mp3”).) A player can then retrieve the referenced audio file by parsing the SMIL file and following the *uri*. (See EX-1007, (Bulterman), 62-70; EX-1002 §84.)

~~42.85. Even~~ I note that even if DTB did not disclose ordering a plurality of audio files, it would have been obvious that each *parallel* could comprise a complete audio file such that DTB's SMIL file ordered a plurality of audio files through an ordered list of ~~*paral-els*~~ *parallels*. (EX-1003, (DTB), 14-15, 19-20, 34 (DTB's digital talking book can comprise multiple audio files); *id.*, 21 ("The DTB producer determines granularity of the ~~*synchroniza-tion*~~ *synchronization* events. Synchronization events can be limited to the primary structural elements (those indicated in the NCX)[.]"), 15; EX-1006, (Yoshimura), 1781; ~~EX-1002 ¶85.~~) Thus, it would have been obvious in view of Lindahl and DTB that the first digital audio file (e.g., bookmarked chapter) is selected using the time offset (e.g., Lindahl's bookmark time offset) and a descriptor file (e.g., SMIL file), the descriptor file for ordering (e.g., via *sequence* or ordered *parallels*) a plurality of audio files (e.g., audio files for each chapter). ~~(EX-1002 ¶85.)~~

iii. Yoshimura Discloses a SMIL File for Ordering Multiple Audio Files.

86. This limitation also would have been obvious in further view of ~~Yoshimura~~ Yoshi- mura, which discloses a SMIL file where each *parallel* includes a complete audio-

file in the audio stream. (EX-1006, (Yoshimura), 1781; ~~EX-1002 ¶86~~.) The example SMIL file, ~~pre-vided~~provided below, is the result of dividing an audio file into three *segments/parallels*:-

(1) a ten-minute *segment/parallel*; (2) a twenty-minute *segment/parallel*; and (3) a thirty-minute *segment/parallel*:

```
<!DOCTYPE smil PUBLIC "-//W3C//DTD SMIL 2.0//EN"
"http://www.w3.org/2001/SMIL20/SMIL20.dtd">
<smil xmlns="http://www.w3.org/2001/SMIL20/Language">
  <head>
    <layout>
      <region id="v" top="5" left="5" width="180" height="180"/>
    </layout>
  </head>
  <body>
    <seq>
      <par dur="10min">
        <audio src="rtsp://content-server/content-A-1.mp4" />
        <video src="rtsp://content-server/content-V-1.mp4" region="v" />
      </par>
      <par dur="20min">
        <audio src="rtsp://content-server/content-A-2.mp4" />
        <video src="rtsp://content-server/content-V-2.mp4" region="v" />
      </par>
      <par dur="30min">
        <audio src="rtsp://content-server/content-A-3.mp4" />
        <video src="rtsp://content-server/content-V-3.mp4" region="v" />
      </par>
    </seq>
  </body>
</smil>
```

Fig. 5 Modified SMIL file after content segmentation.

```
<!DOCTYPE smil PUBLIC "-//W3C//DTD SMIL 2.0//EN"
"http://www.w3.org/2001/SMIL20/SMIL20.dtd">
<smil xmlns="http://www.w3.org/2001/SMIL20/Language">
  <head>
    <layout>
      <region id="v" top="5" left="5" width="180" height="180"/>
    </layout>
  </head>
  <body>
    <seq>
      <par dur="10min">
        <audio src="rtsp://content-server/content-A-1.mp4" />
        <video src="rtsp://content-server/content-V-1.mp4" region="v" />
      </par>
      <par dur="20min">
        <audio src="rtsp://content-server/content-A-2.mp4" />
        <video src="rtsp://content-server/content-V-2.mp4" region="v" />
      </par>
      <par dur="30min">
        <audio src="rtsp://content-server/content-A-3.mp4" />
        <video src="rtsp://content-server/content-V-3.mp4" region="v" />
      </par>
    </seq>
  </body>
</smil>
```

Fig. 5 Modified SMIL file after content segmentation.

(EX-1006;

(*Id.*, 1781, Fig. 5; EX-1002 ¶86.) Each *segment* is a distinct audio file. (*Id.*)

87. Yoshimura also explains that “[t]he mobile client receives the SMIL file and requests” the files and renders them in order “according to the SMIL file.”

(EX-1006, (Yoshimura), 1782; *see also id.*, 1783 (client can control content by skippingskip- ping forward or going back to segments); ~~EX-1002 ¶87.)~~
~~—).)~~ Thus, Yoshimura discloses that the SMIL file (descriptor file) is for ordering a plurality of audio files. ~~(EX-1002 ¶87.)~~

iv. Combining Lindahl with a SMIL File

~~43.88.~~ It would have been obvious to a ~~POSITA~~person of ordinary skill in the art to select Lindahl's chapter audio file using the time offset from Lindahl's bookmark and a SMIL file (disclosed in DTB and Yoshimura) for ordering a plurality of ~~chapter~~chap- ter audio files. (~~Id.~~ ¶¶88-95.)

~~44.89.~~ ~~A POSITA~~A person of ordinary skill in the art would have been motivated to use a SMIL file, as disclosed in DTB and Yoshimura, to index Lindahl's chapter audio files for multiple reasons. (~~Id.~~ ¶¶89-94.)

~~45.90.~~ First, Lindahl discloses the need to retrieve audio files on a chapter-by-chapter basis based on a bookmark. (EX-1004 (Lindahl) ¶[0040], claims 15, 18; ~~EX-1002~~ ¶90.)

~~46.91.~~ Second, as I discuss above, Lindahl discloses that its system is adapted for use with the DTB standard. (~~Supra~~ §VII.A.5.c; ~~EX-1002~~ ¶91 (See ¶63, above.)

~~47.92.~~ Third, as explained in Yoshimura, there are multiple benefits of using a SMIL file to index audio files (e.g., chapter audio files) including because "SMIL can ~~eas- ily~~easily manage the timing and spatial relations among segments" and "[c]ontent ~~provid- ers~~providers can easily create SMIL files for describing streaming content because ~~SMIL is a standard and popular scene description language.~~" (~~EX-1006, 1779; EX-1002~~ ¶92.)

SMIL is a standard and popular scene description language.” (EX-1006
(Yoshi- mura), 1779.)

Fourth, the combination represents the simple addition of one known element
(e.g., SMIL file) to another known element (e.g., Lindahl’s system) to obtain a ~~pre-~~
~~dictable~~predictable result (e.g., indexing Lindahl’s audio streams using a SMIL file).
~~(EX-1002~~
~~¶93); KSR, 550 U.S. at 417.~~

Fifth, the combination represents the use of a known technique (e.g., indexing audio ~~segments~~seg- ments using a SMIL file) to improve a similar device and method (e.g., Lindahl’s audio streams segmented by chapter) in the same way. (~~Id.~~)

~~48.93.~~ Sixth, the combination ~~applies~~ap- plies a known technique (e.g., indexing audio ~~seg- ments~~segments using a SMIL file) to a known device and method (e.g., Lindahl’s audiobooks segmented by chapter) that is ready for improvement and yields predictable results (e.g., chapter-by-chapter ~~playback~~). (~~Id.~~)play- back).

~~49.94.~~A POSITA A person of ordinary skill would also have had a reasonable expectation of success in using a SMIL file (e.g., as disclosed in DTB and/or Yoshimura) with Lindahl’s audiobook at least because Lindahl was adapted for use with DTB’s ~~system~~sys- tem, which includes SMIL files, and SMIL files were “easily create[d],” “standard and popular.” (~~Supra~~)(See ¶63, above; EX-1006 (Yoshimura), 1779.)

~~§VII.A.5.c; EX-1006, 1779; EX-1002 ¶94.)~~

95. Thus, Lindahl, DTB, and/or Yoshimura together render obvious claim element 12[f][ii].

j. **Element 12[f][iii]: Descriptor File Including at Least One of a Start Time, an End Time, and a Play Time of Each Audio File**

50:96. Element 12[f][iii] recites that the descriptor file includes “at least one of a start time, an end time, and a play time of each digital audio file in the plurality of digital audio files within the audio stream.” DTB and/or Yoshimura disclose or render obvious this claim element.

i. **DTB’s SMIL File Includes a Start and End Time of the Audio Segments.**

DTB discloses that the SMIL file includes a start time and an end time for each digital audio file. (*See, e.g.*, EX-1003, (DTB), 34 (specifying a start time of

~~51.97.~~ “00:00.091” and an end time of “00:34.754” for audio file “rs_notes.mp3”), 27 (describing clipBegin and clipEnd~~;~~ ~~EX-1002 ¶97.)~~.) Thus, DTB discloses this ~~limita- tion. (EX-1002 ¶97.)~~ limitation.

~~52.98.~~ Moreover, in the use case ~~described~~ I discuss above where each *parallel* includes a complete audio file, the start and end time of each *parallel* would represent the start and end time of each file within the audio stream. (EX-1007; (Bulterman), 141- 47; ~~EX-1002 ¶98.~~) Moreover, the duration (and inclusion thereof) would have been obvious to a ~~POSITA~~ person of ordinary skill given a begin and end time in the SMIL file. ~~(EX-1002 ¶98.)~~ Accordingly, DTB discloses or renders obvious this limitation. ~~-(Id.)~~

**ii. Yoshimura’s SMIL File
Includes the Play Time, Start
Time, and End Time for Each
Audio File.**

99. ~~Even if DTB did not disclose or render obvious this~~ This limitation, ~~it~~ also would have been obvious in view of Yoshimura.

Yoshimura discloses this limitation because it discloses that the SMIL file provides the duration of each audio file in the stream. (EX-1006, (Yoshimura), 1782-83; ~~EX-1002 ¶99.~~)

~~To I understand~~ the ~~extent PO argues~~ Patent Owner may argue that ~~that~~ the claim also ~~requires~~ requires start and end times of each audio file. In that case, a ~~POSITA~~ person of ordinary skill in the art would have understood those to be disclosed by ~~Yoshi—mura’s~~ Yoshimura’s SMIL file as well. (~~Id.~~; EX-1006 (Yoshimura), 1782-83; EX-1007, (Bulterman), 141-47 (“In general, begin+dur=end, but this is not always true.”).) For example, a ~~POSITA~~ person of ordinary skill would have understood the first audio file (content-A-1.mp4) to start at time zero and end at ten minutes. (~~EX-1002 ¶100.~~) Similarly, the second audio file (content-A-2.mp4) begins immediately after

~~53-100.~~ the first audio file (content-A-1.mp4) ends (i.e., at ten minutes) and ends 30 minutes into the stream (e.g., the combined durations of ~~content~~con- tent- A-1.mp4 and content-A-2.mp4). ~~(Id.)~~ The third audio file (content-A-3.mp4) begins immediately after the second audio file (content-A-2.mp4) ends (i.e., at 30 minutes) and ends 60 minutes into the audio stream. ~~(Id.)~~ It also would have been obvious to ~~include~~in- clude the start and end time in the SMIL file, as those attributes were routinely ~~included~~in- cluded in SMIL files. ~~(Id. (citing E.g., EX-1003; (DTB), 27; EX-1051; (SMIL Standard), 126-35; EX-1007; (Bulterman), 94-95, 141-147.) 47.)~~

54.101. Thus, DTB alone or in combination with Yoshimura renders obvious the ~~de-scriptor~~descriptor file (e.g., SMIL) including at least one of a start time, an end time, and a play time (e.g., duration) of each digital audio file in the plurality of digital audio files within the audio stream. ~~(EX-1002 ¶¶101-05.)~~ A ~~POSITA~~A person of ordinary skill in the art would have been motivated to include the play time, start time, and/or end time in the SMIL file for multiple reasons. ~~(Id.)~~

55.102. First, each of these attributes were well known and commonly used. ~~(Id. ¶102 (citing~~ (E.g., EX-1003, (DTB), 27; EX-1051, (SMIL Standard), 126-35; EX-1007, (Bulter- man), 94-95). ~~).~~

Second, the combination represents the simple addition of known ~~element~~ele- ments (e.g., play, start, and/or end time of the audio file in the stream) to another known element (e.g., SMIL file) to obtain a predictable result (e.g., SMIL file with play, start, and end times). ~~(EX-1002 ¶103); KSR, 550 U.S. at 417.~~

Third, the combination represents the use of a known technique (e.g., ~~includ-~~
~~in~~including play, start, and/or end time in SMIL *parallels*) to improve a similar device and
method (e.g., SMIL *parallels*) in the same way. (~~Id.~~)

56.103. Fourth, the combination applies a known technique (e.g., SMIL
file with play, start, and/or end time) to a known device and method (e.g., SMIL file)
that is ready for improvement and yields predictable results (e.g., SMIL files with
play, start, and end times). (~~Id.~~)

104. A ~~POSITA~~person of ordinary skill would also have reasonably expected
success in combining ~~Yo-shimura's~~Yoshimura's *parallels* including complete files
with play times with-

DTB's *parallels* at least because SMIL files, including those with start, end and play times, were common, well-known, and widely understood. (EX-1006; (Yoshimura), 1779 (~~POSITA~~a person of ordinary skill could “easily create SMIL files for describing streaming content because SMIL is a ~~stand-~~ardstandard and popular scene description ~~language~~”); ~~EX-1002 ¶104.)~~language”).)

105. Thus, DTB and/or Yoshimura disclose or render obvious claim element 12[f][iii].

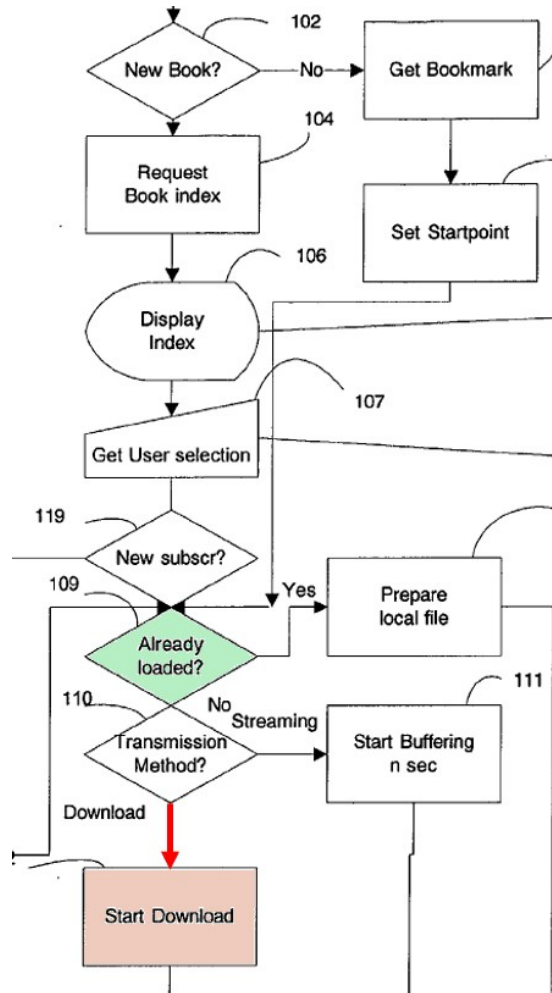
k. **Elements 12[g]-12[h]: Determining if the First Digital Audio File Is Resident Within the Computer and Downloading File**

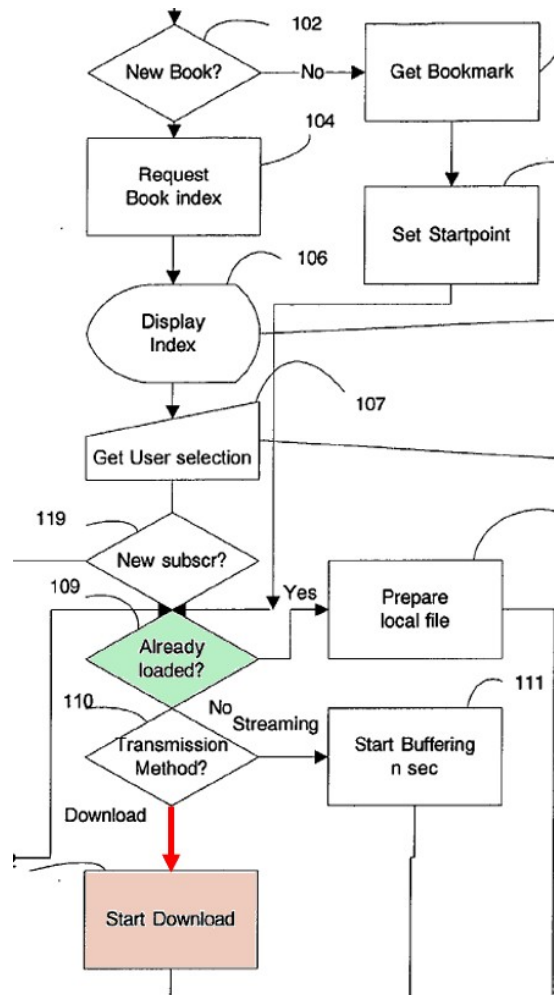
~~57.106.~~106. Element 12[g] recites “determin[ing] if the first digital audio file is ~~resident~~res-ident within the computer” and element 12[h] recites “download[ing] the first digital audio file from the library in dependence upon whether the first digital audio file is already resident within the computer.”

Lindahl discloses or renders obvious these claim elements.

107. As illustrated in Figure 2 below (blocks 109 and 112), Lindahl’s “~~system~~sys-tem checks if the book is already loaded on the client device[.]” (EX-1004 (Lindahl)) ¶[0033]; *see also id.* ¶[0034].) If a requested audiobook in Lindahl “has not been already loaded, the file is transmitted to the client device from the server device.” (*Id.* ¶[0033].) The audio file can be downloaded on a chapter-by-chapter basis from the start point ~~iden-tified~~identified in the bookmark. (*Id.*; *see also id.* ¶[0022] (“Transmission-

may be either a selective download of an audio file of a chapter of a selected book, or a transmission using streaming technology.”), Fig. ~~2; EX-1002~~ ¶1072.)





(EX-1004,

(Id., Fig. 2 (excerpt); EX-1002 ¶107.)).

58.108. A POSITA A person of ordinary skill in the art would have understood determining whether a book is “loaded” to include determining whether a relevant portion, such as an audio file ~~corresponding~~ corresponding to a chapter, is resident within the client. ~~(EX-1002 ¶108.)~~ To the extent ~~Lindahl does not disclose determining whether a specific file in the audio stream was resident (e.g., loaded), it would have been obvious to a POSITA to use Lindahl’s check to~~

| Lindahl does not disclose determining whether a specific file in the audio stream

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was resident (e.g., loaded), it would have been obvious to a

person of ordinary skill to use Lindahl's check to determine whether the audio file corresponding to the bookmarked location (e.g., start point) was resident on the client device. ~~(Id.)~~

~~59.109.~~ Accordingly, these limitations are disclosed Thus, Lindahl discloses or ~~rendered~~ renders obvious ~~by Lindahl. (Id. ¶¶106-09.)~~ claim elements 12[g] and
12[h].

I. Element 12[i]: Loading the First Digital Audio
File for Playback

~~60.110.~~ Element 12[i] recites “load[ing] the first digital audio file for
playback with the media player from the first position.” Lindahl discloses this claim
element.

111. Lindahl teaches that “[o]n receipt of the downloaded file it may be played.” (EX-1004 (Lindahl) ¶[0033].) The received file is retrieved and ~~decompressed~~ decom- pressed in preparation for playback, and then the client device “initiates play of the ~~audiobook~~ audio book ... from the point as determined by the stored bookmark.” (*Id.* ¶[0035]; *see id.* ¶[0034] (the ~~de-vice~~ device checks to see whether the audiobook is already “loaded”).)

~~61.112.~~ Lindahl therefore discloses loading the first digital audio file (e.g.,
chapter file containing the ~~book-marked~~ bookmarked position) for playback with the
media player (e.g., client device) from the first position (e.g., bookmarked position).
(EX-1002 ¶¶110-13.)

113. Thus, Lindahl discloses claim element 12[i].

~~62.114.~~ Accordingly, for at least the reasons I discuss above, Lindahl, DTB,
and Yoshimura render claim 12 obvious. ~~(Id. ¶¶45-114.)~~ as a whole.

~~B.—Claim 13~~

63.115. Claim 13 depends from claim 12 and further recites
“wherein the first position is determined when the media player is stopped
while playing the audio stream.” Lindahl discloses the additional claim
element of claim 13.

2. Claim 13

~~64.116.~~ Lindahl's "timer records the elapsing time so that a bookmark may be created if requested at a later date which contains information on the time at which the user paused play." (EX-1004 (Lindahl) ¶[0035]; *see also id.* ¶[0036] (~~bookmark~~book- mark set at time user "stop[s]" playing), [0015] (same), [0037], [0041], Figs. 2-3 (bookmark set upon "stop").) The client determines the time at which the media was stopped and a ~~book-mark~~bookmark is then set at the time at which the reading of the audio was stopped. (~~*Id.*; supra~~ §VII.A.2 (~~*Id.*; see~~ ¶¶48-50, above (first position is determined based on when the timer is stopped); ~~EX-1002 ¶116.)~~.)

Lindahl therefore discloses that the first position (e.g., position ~~indicated~~indi- cated by the timer) is determined when the media player is stopped while playing the audio stream. (~~EX-1002 ¶¶115-18.)~~

C. Claim 14

~~Claim 14 depends from claim 12 and further recites "wherein the first position is determined in response to a make bookmark command."~~

117. Thus, Lindahl discloses this limitation because it the additional claim element of claim 13.

118. Accordingly, for at least the reasons I discuss above, Lindahl, DTB, and Yoshimura render claim 13 obvious as a whole.

~~2. Claim 14~~
Claim 13

119. Claim 14 depends from claim 12 and further recites “wherein the first position is determined in response to a make bookmark command.”
Lindhahl dis- closes the additional claim element of claim 14.

~~65.120.~~ Lindhahl discloses that the user “can request that ~~at~~-a bookmark be set.” (EX-1004 (Lindhahl) ¶[0036]; *see also id.* ¶¶[0035] (bookmark “created if ~~requested~~re- requested”), [0041] (server receives bookmark request), [0044] (user can “create a bookmark”), Figs. 2-3.) Lindahl specifically refers to it as a user “~~com-mand~~command.” (*Id.*, claim 16; ~~EX-1002 ¶120.~~) The position is “determined” in order to be included in the bookmark. (*Id.*)

121. Thus, Lindahl discloses the additional claim element of claim 14.

122. Accordingly, for at least the reasons I discuss above, Lindahl, DTB, and Yoshimura render claim 14 obvious as a whole.

4. Claim 16

66-123. Claim 16 depends from claim 12 and further recites “wherein the ~~computer~~com- ~~puter~~ code is further configured to cause said computer to[] transfer the bookmark to ~~an—other computer.~~another computer.” Lindahl and/or DTB disclose or render obvious the additional claim element of claim 16.

Lindahl’s bookmark “may [] be uploaded to the server[.]” (EX-1004

124. (Lindahl) ¶[0036].) Lindahl therefore discloses that the computer code is configured-

to cause said computer (e.g., client device) to transfer (e.g., upload) the bookmark to another computer (e.g., server). (*Id.*; EX-1002 ¶124.)

67.125. To the extent PO argues I understand that the Patent Owner may argue that the other computer must be a client computer. In that case, this limitation would have been obvious in view of Lindahl. (EX-1002 ¶125.) In addition to uploading a bookmark to the server, Lindahl disclosesdis- closes transferring the bookmark from the server back to a client device. (EX-1004 (Lindahl) ¶[0031] (“the book-markbookmark ... associated with the book which the user wishes to resume reading is ob-tainedobtained from the server, and the starting point for the current audio reading session may then be determined”), Fig. 2 (“Get Bookmark”); EX-1002 ¶125.”).) Lindahl also “provides users with the convenience of choice of a number of client devices which they may use to access the system[.]” (EX-1004 *Id.* ¶[0043].) Accordingly, it would have been obvious in view of Lindahl that a client device could transfer a bookmark through the server to another client device associated with the user. ~~(*Id.*; EX-1002(*Id.*) A person of ordinary skill in the art would have been motivated to implement Lindahl in this manner because it would allow an authorized user to start an audiobook on one de- vice (e.g., audio book device) and later resume the audiobook from the stopping point on another device (e.g., handheld computer or cell phone).~~

~~¶125.) A POSITA would have been motivated to implement Lindahl in this manner~~

~~because it would allow an authorized user to start an audiobook on one device (e.g., audio book device) and later resume the audiobook from the stopping point on an other device (e.g., handheld computer or cell phone). (EX-1002 ¶125.)~~

~~68.126. Even if Lindahl did not disclose or render obvious this~~ This limitation, ~~it~~ would also have been obvious in further view of DTB. ~~(Id. ¶126.)~~ DTB’s players “allow readers to set bookmarks and ... export the resulting collection of marks and notes to other compliant playback devices.” (EX-1003; (DTB), 45.)

~~69.~~127. A ~~POSITA~~person of ordinary skill in the art would have been motivated to ~~provide~~pro- vide players with code ~~config-ured~~configured to cause the player to transfer the bookmark to another player (e.g., as disclosed in DTB) for multiple reasons. ~~(EX-1002 ¶¶127-33.)~~

~~70.~~128. First, a ~~POSITA~~person of ordinary skill would have understood that books ~~create~~cre- ate connections ~~be- tween~~between communities and that people often want to share passages from books that are particularly impactful to them. ~~(Id. ¶128.)~~ Book clubs are one example of an ~~audi- enee~~audience that would be interested in transferring bookmarks from one client ~~device~~de- vice to another. ~~(Id.)~~

Second, transferring bookmarks between media players was well-known and commonplace. ~~(Id. ¶129 (citing~~E.g., EX-1062, (Himmel), 2:63-3:67; EX-1069, (Dimi- trova), 3:14-28; EX-1005

~~71.~~129. ~~(Sull) ¶[0063-64].)~~

Third, the combination represents the simple addition of one known ~~element~~element (e.g., code for transferring bookmarks between players) to another known element

~~el-ement~~ (e.g., Lindahl's code for transferring bookmarks to a server) to obtain a ~~predictable~~~~pre-~~~~dictable~~ result (e.g., players transferring bookmarks to other players). ~~(EX-1002 ¶130); KSR, 550 U.S. at 417.~~

~~72.130.~~ Fourth, the combination represents the use of a known technique (e.g., ~~trans-ferring~~transferring bookmarks to other players) to improve a similar device and method (e.g., Lindahl's players) in the same way. Fifth, the combination applies a known technique (e.g., ~~(#)~~transferring bookmarks to other players) to a known device and method (e.g., Lindahl's players)

~~Fifth, the combination applies a known technique (e.g., transferring book-~~
~~marks to other players) to a known device and method (e.g., Lindahl's~~
~~players) that is ready for improvement and yields predictable results (e.g.,~~
players capable of transferring bookmarks to other players). ~~(Id.)~~

~~73.~~131. ~~A POSITA~~A person of ordinary skill would also have reasonably expected success in combining DTB's transferable bookmarks with Lindahl's system at least because the code for ~~transfer-ring~~transferring bookmarks between client devices was well known, ~~commonplace~~COM-
monplace, and widely understood. ~~(EX-1002 ¶131.)~~

132. Thus, Lindahl and/or DTB disclose or render obvious the additional claim element of claim 16.

133. Accordingly, for at least the reasons I discuss above, Lindahl, DTB, and Yoshimura render claim 16 obvious as a whole.

5. **Claim 17**

~~74.~~134. Claim 17 depends from claim 16 and further recites “wherein the other ~~com-puter~~computer is for loading a digital audio file including the first position for playback by ~~another~~an other media player, the media player and the other media player using one of the same audio formats and different audio formats.” Lindahl and/or DTB disclose or render obvious the additional claim element of claim 17.

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135. As ~~discussed~~I discuss above, both Lindahl and DTB teach that clients/players (in this case other computers) are able to receive a bookmark and load a digital audio file including the bookmarked position for playback. (~~Supra §§VII.A.5, VII.A.8 – VII.A.9; EX-1002 ¶135.~~)(See ¶¶55-71, 78-95, above.)

With respect to audio formats, Lindahl's server "determines the format for transmission of the selected book from the server to the client." (EX-1004 (~~Lin-~~ dahl) ¶[0040], Fig. 3.) Moreover, Lindahl discloses a variety of client devices with a variety of decoding/processing capabilities. (*Id.* ¶[0043], [0016], Fig. 1; ~~EX-1002 ¶136.~~) It would have been obvious that two different client devices could use the same audio formats and/or different audio formats depending on their capabilities. (~~EX-1002~~

~~75.136.~~ ~~¶136.~~ It also would have been obvious that a client device may receive and render different audio ~~formats~~for- mats on the same device such that a second client device could render files in both the same audio format and a different audio format than another client device. (~~*Id.*~~)

~~Even if Lindahl did not disclose or render obvious this~~ This limitation, ~~it~~ would also have been obvious in view of DTB. (~~*Id.* ¶137.~~) DTB "strongly recommend[s] that players be able to decode all listed [audio] formats," including formats with the ~~ex-~~ tensionsextensions ".aac," ".mp3," and ".wav." (EX-1003, (DTB), 19-20.) "It is permissible for parts of a single book to be encoded in different audio formats." (*Id.*) DTB "[p]layers

~~76.137.~~ must support transitions between differently ~~encoded~~en-coded sections smoothly.” (*Id.*) ~~Ac-cordingly~~Accordingly, DTB discloses or renders obvious two different media players using one of the same audio formats and different audio formats. (~~EX-1002 ¶137.~~)

~~77.138.~~ ~~A POSITA~~A person of ordinary skill in the art would have been motivated to allow different client devices to support the same and/or different audio formats (e.g., as disclosed by DTB) for ~~mul-tiple~~multiple reasons. (~~Id. ¶¶138-45.~~)

~~78.139.~~ First, there are a variety of content creators with different recording ~~devices~~de- vices and editing software that generate files in different formats. ~~(Id. ¶139.)~~ This requires ~~media~~me- dia players that can handle diverse formats. ~~(Id.)~~

~~79.140.~~ Second, different operating systems and devices may have different preferred formats, so a versatile media player ensures compatibility across platforms. ~~(Id. For example, as Lindahl discusses, different client devices may have different qual- ity and compression needs. (EX-1004 (Lindahl) ¶¶[0022]-[0023].) I have dealt with the issue of multiplatform compatibility in my own work, for example in developing multimedia toolkits that support transcoding media into different formats based on client preferences and capabilities.~~

~~¶140.) For example, as Lindahl discusses, different client devices may have differ- ent quality and compression needs. (EX-1004 ¶¶[0022] [0023]; EX-1002 ¶140.)~~

~~80.141.~~ Third, it was well known for media players to be capable of rendering content in many formats, allowing a media player to render content in the same ~~format~~for- mat or in a different format from another media player. ~~(EX-1002 ¶141 (citing (E.g., EX-1027 (Duncan) ¶[0042]; EX-1003, (DTB), 4, 7, 23-25, 59-60).).)~~

Fourth, the combination represents the simple addition of one known element (e.g., media players able to accommodate ~~5~~ different and/or the same content formats

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81.142. as other media players) to another known element (e.g., Lindahl's client server ~~sys-tem~~system) to obtain a predictable result (e.g., multiple players transferring ~~bookmarks~~book- marks to other players where the other player renders content in the same and/or different format as other players). Fifth, the combination represents the use of a~~(EX-1002 ¶142); KSR, 550 U.S. at 417.~~

~~Fifth, the combination represents the use of a~~ known technique (e.g., DTB’s players capable of rendering multiple format types) to improve a similar device and method (e.g., Lindahl’s players) in the same way. ~~(Id.)~~

Sixth, the combination applies a known technique (e.g., DTB’s players ~~capa-~~
~~ble~~capable of rendering multiple format types) to a known device and method (e.g., ~~Lin-~~
~~dahl’s~~Lindahl’s players) that is ready for improvement and yields predictable results (e.g., players capable of rendering similarly and/or differently formatted content as other players). ~~—(Id.)~~

82.143. A POSITA person of ordinary skill would also have reasonably expected success in combining DTB’s transferable bookmarks with Lindahl’s system for the reasons ~~discussed~~I discuss above and because Lindahl’s system is “adapted for use” with DTB. ~~(Supra §VII.A.5; EX-1002 ¶143.)~~(See

~~VI. GROUND 1B: CLAIM 15 WOULD HAVE BEEN OBVIOUS IN VIEW OF LINDAHL, DTB, YOSHIMURA, AND SULL.~~

~~¶¶55-71, above.)~~

144. Thus, Lindahl and/or DTB disclose or render obvious the additional claim element of claim 17.

145. Accordingly, for at least the reasons I discuss above, Lindahl, DTB, and Yoshimura render claim 17 obvious as a whole.

B. Claim 15 Would Have Been Obvious in View of Lindahl, DTB, Yoshimura, and Sull.

146. As I discuss above, Lindahl, DTB, and Yoshimura disclose and/or render obvious each limitation of claim 12. (See ¶¶45-114, above.) For at least the reasons I discuss below, claim 15 would have been obvious in further view of Sull.

147. Claim 15 depends from claim 12 and further recites “wherein the time-offset is determined by subtracting a predetermined value from the point in time of

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the first position from the beginning of the audio stream.” ~~As discussed~~
~~above, Lindahl, Sull discloses the addi- tional claim element of claim 15.~~

~~DTB, and Yoshimura disclose or render obvious each limitation of claim 12. (Supra §VII.A.)~~

148. Sull describes a method for indexing, searching, and identifying ~~portions~~po- tions of multimedia files. (EX-1005, (Sull), Abstract.) Sull discloses marking a ~~position~~po- sition for ~~view-ing~~viewing at a later date and/or on a different device. (*Id.* ¶[0013]; ~~EX-1002 ¶148.~~) Sull teaches that “in some cases, it is desirable to begin the playback of the multimedia file a certain time before the terminated point, since such rewinding could help re- fresh the user’s memory.” (~~EX-1005~~*Id.* ¶[0014].)

83.149. Accordingly, Sull discloses or ~~ren- ders~~renders obvious that the time offset is determined by subtracting a predetermined value (e.g., certain time before) from the point in time of the first position (e.g., time ~~indi- cated~~indicated by timer when bookmark ~~requested~~re- quested) from the beginning of the audio stream (e.g., audiobook). (~~EX-1002 ¶149.~~) Thus, Sull dis- closes the additional claim element of claim 15.

84.150. A ~~POSI~~person of ordinary skill in the art would have been motivated to ~~incorporate~~in- corporate the offset calculation of Sull, in which a bookmark begins playback from a certain time before a ~~termina- tion~~termination point, into Lindahl’s bookmark for multiple ~~reasons.~~ (*Id.* ¶¶150-54.) rea- sons.

85.151. First, Sull suggests the combination because it teaches that “such

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~~rewinding~~re-winding could help refresh the user's memory.” (EX-1005 (Sull) ¶[0014];

~~EX-1002 ¶(151-).)~~

Second, the combination represents nothing more than the simple ~~addition~~addi- tion of one known element (e.g., Sull's rewinding from a termination point) to ~~another~~an- other known element (e.g., Lindahl's bookmark based on the termination point) to obtain

predictable results (e.g., bookmarks set to a certain time prior to the ~~termination~~termination point). ~~(EX 1002 ¶152); KSR, 550 U.S. at 417.~~

Third, the combination represents the use of a known technique (e.g., Sull's rewinding from a termination point) to improve a similar device and method (e.g., Lindahl's bookmarks) in the same way. ~~(Id.)~~

~~86.152.~~ Fourth, the combination applies a known technique (e.g., Sull's rewinding from a termination point) to a known device and method (e.g., Lindahl's ~~bookmark-ing~~bookmarking systems and methods) that is ready for improvement and yields predictable ~~re-sults~~results (e.g., a bookmark from a certain time prior to a termination point). ~~(Id.)~~

~~87.153.~~ Moreover, a ~~POSITA~~person of ordinary skill would have reasonably expected success in subtracting a predetermined value from Lindahl's timer value for the ~~reasons~~rea- sons discussed above and because doing so is nothing more than a routine calculation and modification of a value in a file, all of which was routine for ~~POSITA~~persons of ordinary skill at the time. ~~(EX 1002 ¶153.)~~

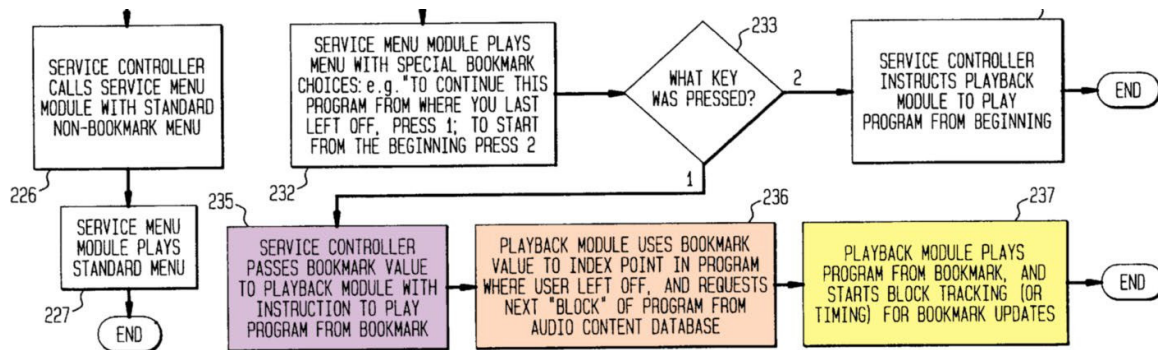
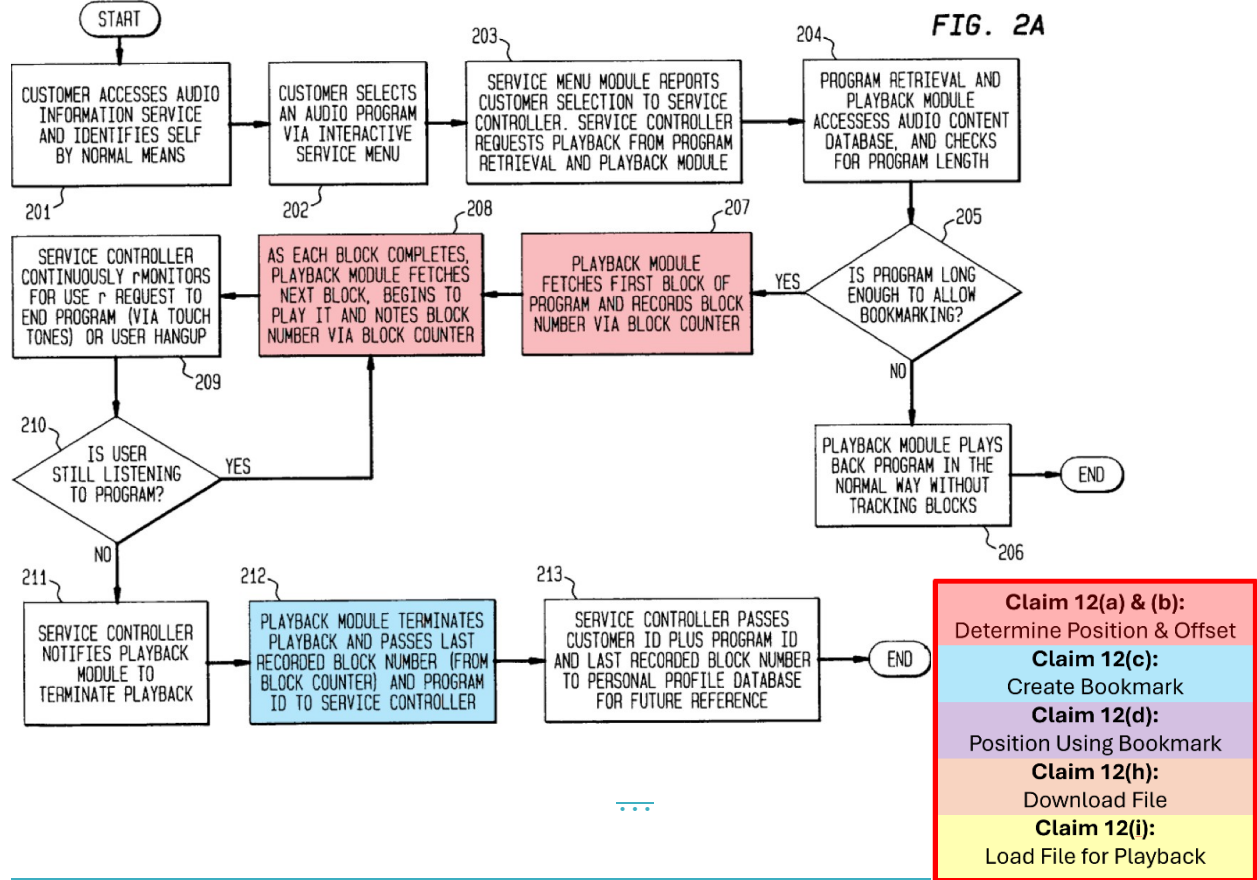
~~VII. GROUND 2A: CLAIMS 12-13 WOULD HAVE BEEN OBVIOUS IN VIEW OF HANSON, YOSHIMURA, BULTERMAN, AND FREDRICKSON.~~

154. Accordingly, for at least the reasons I discuss above, Lindahl, DTB, Yoshimura, and Sull render claim 15 obvious as a whole.

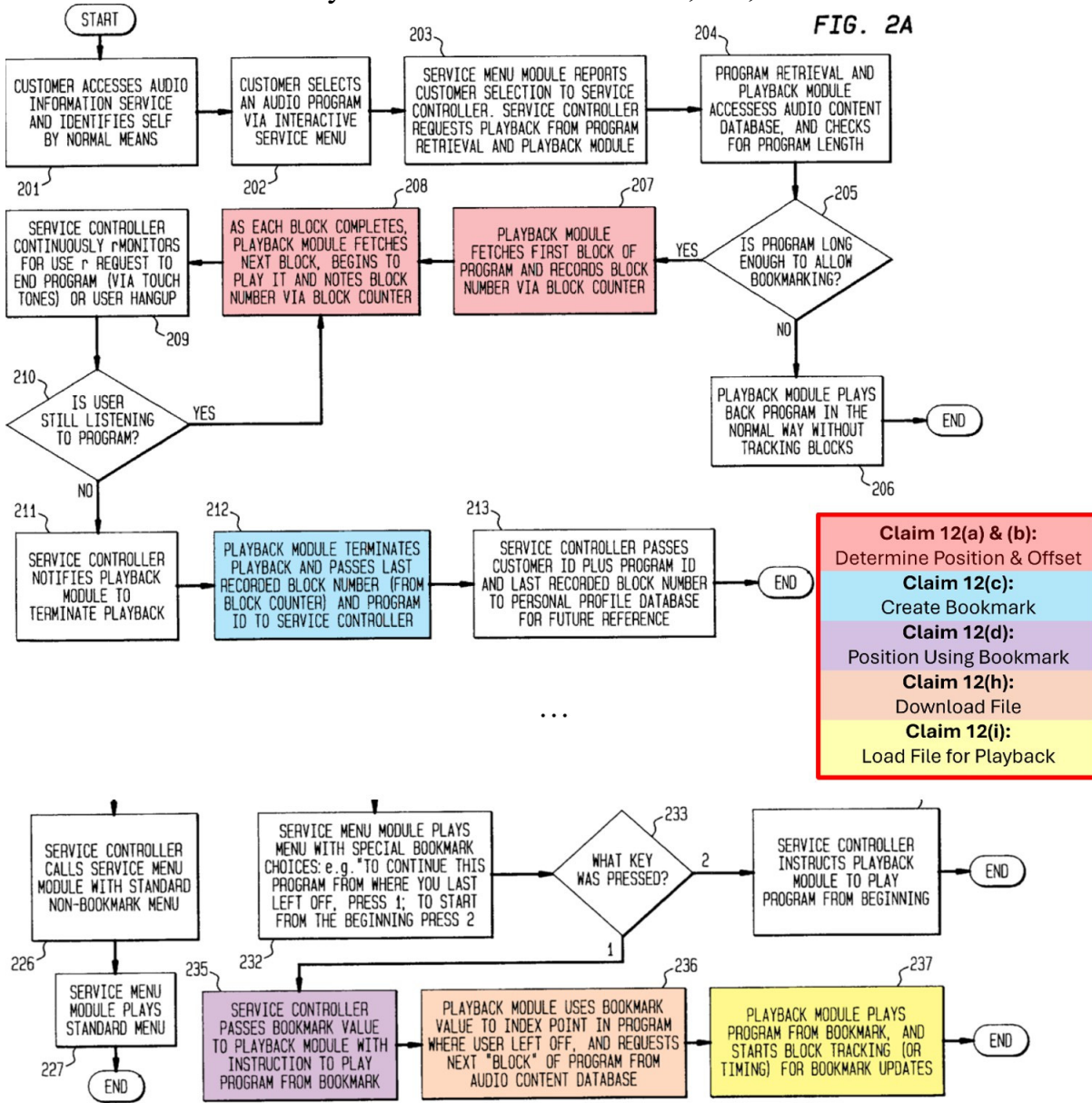
**C. Claims 12-13 Would Have Been Obvious in View of
Hanson, Yoshimura, Bulterman, and Fredrickson.**

155. For at least the reasons I discuss below, Hanson, Yoshimura, Bulterman, and Fredrickson render claims 12-13 obvious.

88-156. As shown in Figures 2A and 2B below, Hanson discloses a system for ~~render ing~~rendering a segmented audio stream including determining a position and time offset while the audio is playing (elements 12[a] and 12[b]), creating a bookmark including the time offset (element 12[c]), and positioning the audio stream using the bookmark (element 12[d]) for playback (element 12[i]). ~~(EX-1002 ¶156.)~~



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(EX-1033; [\(Hanson\)](#), Figs. 2A-2B (excerpts); [EX-1002 ¶156](#).)

89.157. While Hanson does not disclose a descriptor file (elements 12[e] and 12[f]) or checking the client cache before downloading the bookmarked file ([elements 12\[g\] elements 12\[g\] and 12\[h\]](#)), [these limitations would have been obvious in view of](#)

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~~and 12[h]), these limitations would have been obvious in view of~~
Yoshimura and Fredrickson, respectively. ~~EX-1006; (Yoshimura); EX-1034;~~
~~(Fredrickson), 6:32-55, Fig. 4; EX-1002 ¶157.)~~

1. Claim 12³

a. Preamble

158. The preamble of claim 12 recites a “non-transitory computer readable storage medium including computer readable code, which when executed by a computer, causes said computer to” perform the claim limitations. Hanson discloses or renders obvious such a storage medium.

~~90.159.~~ Hanson discloses embodiments implemented on a user’s PC. (EX-1033, (Hanson), 6:30-32.) A ~~POSITA~~person of ordinary skill in the art would have ~~understood~~understood “PC” to refer to a personal computer ~~in-cluding~~including a non-transitory computer readable storage medium storing computer ~~read-able~~readable code. ~~(EX-1002 ¶159.) To the extent the preamble is limiting,~~ Hanson ~~there-fore discloses~~therefore discloses or renders obvious a non-transitory, computer readable storage ~~me-dium~~medium in- cluding computer readable code, which when executed by a computer, causes said computer to perform the below claim limitations. ~~(Id.)~~

~~91.160.~~ ~~To the extent PO argues~~I understand the Patent Owner may argue that the claims require the computer code to be executed exclusively on a client PC (as opposed to on a server or a combination of a server and a client PC~~;~~). In that case, it would have been ~~obvious~~obvi- ous to a ~~POSITA~~person of ordinary skill to execute

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Hanson's functions by executing code on the client PC. ~~(EX 1002 ¶¶160-65.) First, many~~

~~of the functions are already disclosed as being executable on the client PC. (EX 1033,~~

~~6:30-49; EX 1002 ¶161.) Second, POSITAs understood that client PCs were capa-ble of executing (and~~

~~routinely executed) code to perform the claimed functions.~~

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First, many of the functions are already disclosed as being executable on the client PC.

³~~Because the claim language is quoted in Grounds 1A and 1B, it is not repeated here.~~

161. ~~(EX-1002 ¶162.)~~ (EX-1033 (Hanson), 6:30-49.)

162. Second, persons of ordinary skill understood that client PCs were capable of (and routinely did) execute code to perform the claimed functions.

163. Third, the combination represents the simple addition of known ~~elements~~elements (e.g., code for executing the claimed functions) to another known element (e.g., Hanson's client's PC) to obtain a predictable result (e.g., PC executing the claimed functions). ~~(EX-1002 ¶163); KSR, 550 U.S. at 417.~~ Fourth, the combination represents the use of known techniques (e.g., code for executing the claimed ~~functions~~functions) to improve a similar device and method (e.g., Hanson's client's PC) in the same way. ~~(Id.)~~ Fifth, the combination applies a known technique (e.g., code for executing the claimed functions) to a known ~~device~~device and method (e.g., Hanson's ~~client's~~client's PC) that is ready for improvement and yields predictable results (e.g., Hanson's client's PC executing Hanson's ~~functionality~~). ~~(Id.)~~ A POSITAfunction-ality).

92.164. A person of ordinary skill would also have had a reasonable expectation of success in executing the code on the client device to perform the claimed ~~limitations~~limitations at least because computers executing that type of code was routine and ~~conventional~~. ~~(EX-1002 ¶164.)~~conventional.

165. Thus, Hanson discloses or renders obvious the preamble of claim 12.

a. **Element 12[a]: Determining a First Position**

166. Element 12[a] recites “determin[ing] a first position within an audio stream playing on a media player.” Hanson discloses or renders obvious this claim element.

93.167. Hanson discloses a system for rendering audio information including ~~audio books~~audiobooks to users on “a PC or other device or personal appliance.” (EX-1033, (Hanson), 1:65–2:30, 6:30–49; ~~EX-1002 ¶167.~~) Hanson includes a “position detector” that tracks the location using a block counter or timer. (~~EX-1033, Id.~~, 3:38–50, 4:23–32, 4:52–5:12, 2:17–24, 6:39–42 (explaining user’s PC “could monitor the progress through the ~~pro-gram-material~~program material and generate [a] bookmark”); ~~EX-1002 ¶167.)~~.) The user’s position is “detected and associated with a user when the user terminates an audio service.” (Id., 3:38–50.)

~~94.168.~~ ~~“detected and associated with a user when the user terminates an audio service.”~~
~~(EX 1033, 3:38-50.)~~ Accordingly, Hanson discloses or renders obvious determining
(e.g., detecting) a first position (e.g., block or time when user terminates an audio
service) within an audio stream (e.g., audio content) playing on a media player (e.g.,
user’s PC). ~~(EX 1002 ¶¶166-68.)~~ Thus, Hanson discloses or renders obvious claim
element 12[a].

a. Element 12[b]: Determining a Time Offset

169. Element 12[b] recites “determin[ing] a time offset using a point in time
of the first position from a beginning of the audio stream.” Hanson discloses or
renders obvious this claim element.

95.170. Hanson discloses “it may be advantageous to detect the actual elapsed time of the audio program.” (EX-1033, (Hanson), 5:1-2.) “This would be applicable to the actual playback of a continuous program where the system monitors the time (the number of minutes and seconds) that the user has progressed into the audio file.” (*Id.*, 5:2-6.) Hanson then stores “the timing information associated with the location of the user through the audio content” when the audio service is terminated or a bookmark is created. (*Id.*, 4:52-5:12.)

96.171. Hanson therefore discloses or renders obvious determining (e.g., ~~detecting~~de- tecting or recording) a time offset using a point in time of the first position from a beginning of the audio stream (e.g., time the user has progressed into the audio file). ~~(EX-1002)~~Thus, Hanson discloses or renders obvious claim element 12[b].

~~¶¶169-71.)~~

a. Element 12[c][i]: Creating a Bookmark

172. Element 12[c][i] recites “creat[ing] a bookmark for the first position.” Hanson discloses or renders obvious this claim element.

Hanson’s user’s “PC could monitor the progress through the program material and generate the appropriate bookmark.” (EX-1033, (Hanson), 6:39-42, claim 22 (“creating

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173. and storing ... a bookmark”).) The bookmark can include “the actual elapsed time of the audio program,” e.g., “the number of minutes and seconds” the user has ~~pro-gressed~~progressed into a book. (*Id.*, 4:52-53, 5:1-5; ~~EX-1002 ¶173.~~.)

97.174. Hanson therefore ~~dis-closes~~discloses or renders obvious creating a bookmark for the first position (e.g., time where user terminated audio). ~~(EX-1002 ¶¶172-74.)~~Thus, Hanson discloses or renders obvious claim element 12[c][i].

a. **Element 12[c][ii]: The Bookmark Including an Identifier and the Time Offset**

175. Element 12[c][ii] recites that “the bookmark include[es] a file, the file including a unique identifier for identifying the audio stream and including the time offset.” Hanson discloses or renders obvious this claim element.

Hanson’s bookmark includes the elapsed time of an audio program and a “~~pro-~~gram~~program~~ ID.” (EX-1033, (Hanson), 4:43-51, 5:1-12, 2:17-24, Fig. 2A; ~~EX-1002 ¶176.)~~
To the

176. extent the claim requires the bookmark include a separate sub-file containing this information, doing so would have been obvious to a ~~POSITA.~~ ~~(Supra §VII.A.5.d; EX-1002 ¶176.)~~person of ordinary skill in the art for the reasons I discuss above. (See ¶¶65-71, above.)

98.177. Accordingly, Hanson discloses or renders obvious a bookmark ~~in-~~clud-~~ing~~ing a file, the file including a unique identifier (e.g., Program ID) for identifying the audio stream (e.g., audiobook audio service) and including the time offset (e.g., elapsed time). ~~(EX-1002 ¶¶175-77.)~~Thus, Hanson discloses or renders obvious claim element 12[c][ii].

a. Element 12[d]: **The
Bookmark Is for Positioning
the Audio Stream**

178. Element 12[d] recites that the “bookmark is for positioning the audio stream to the first position using the time offset.” Hanson discloses or renders obvious this claim element.

If Hanson’s user wants “to continue the program from where they last left off, the service controller passes the bookmark value to the playback module with the instruction to play the program from the bookmark.” (EX-1033, (Hanson), 5:57-61.) “[T]he playback module would then proceed to mark the restart location according to the

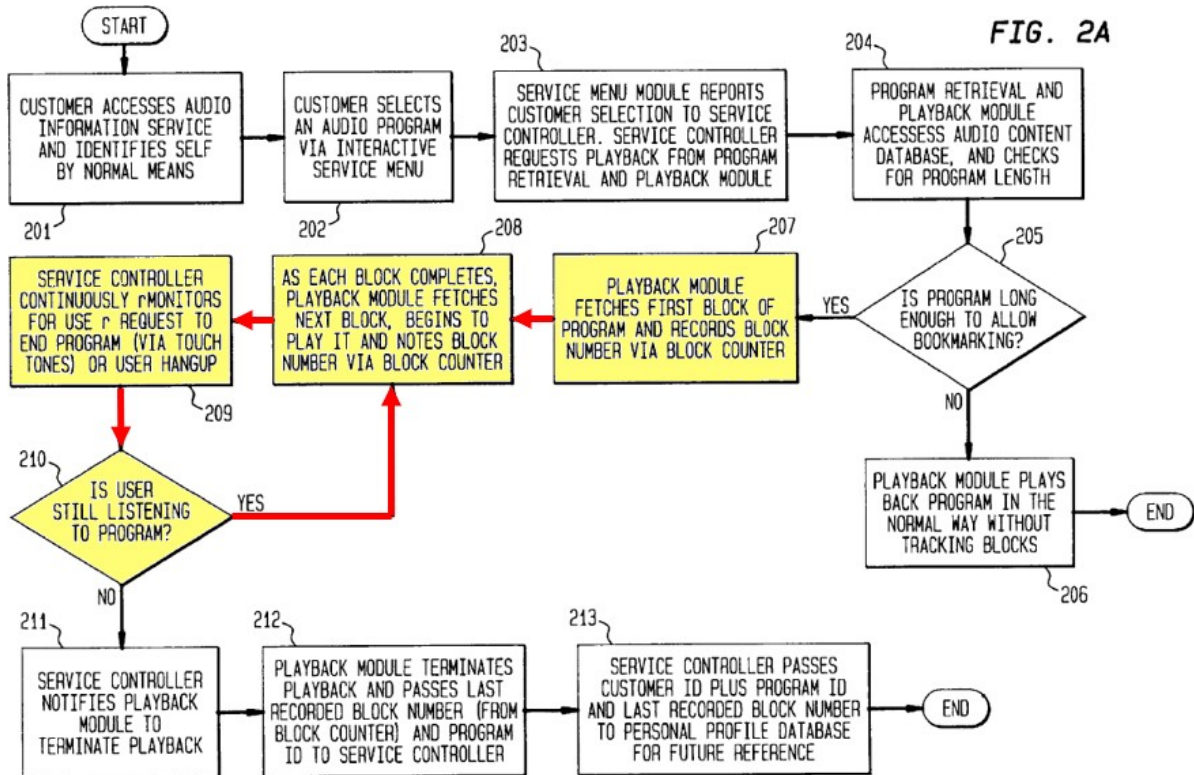
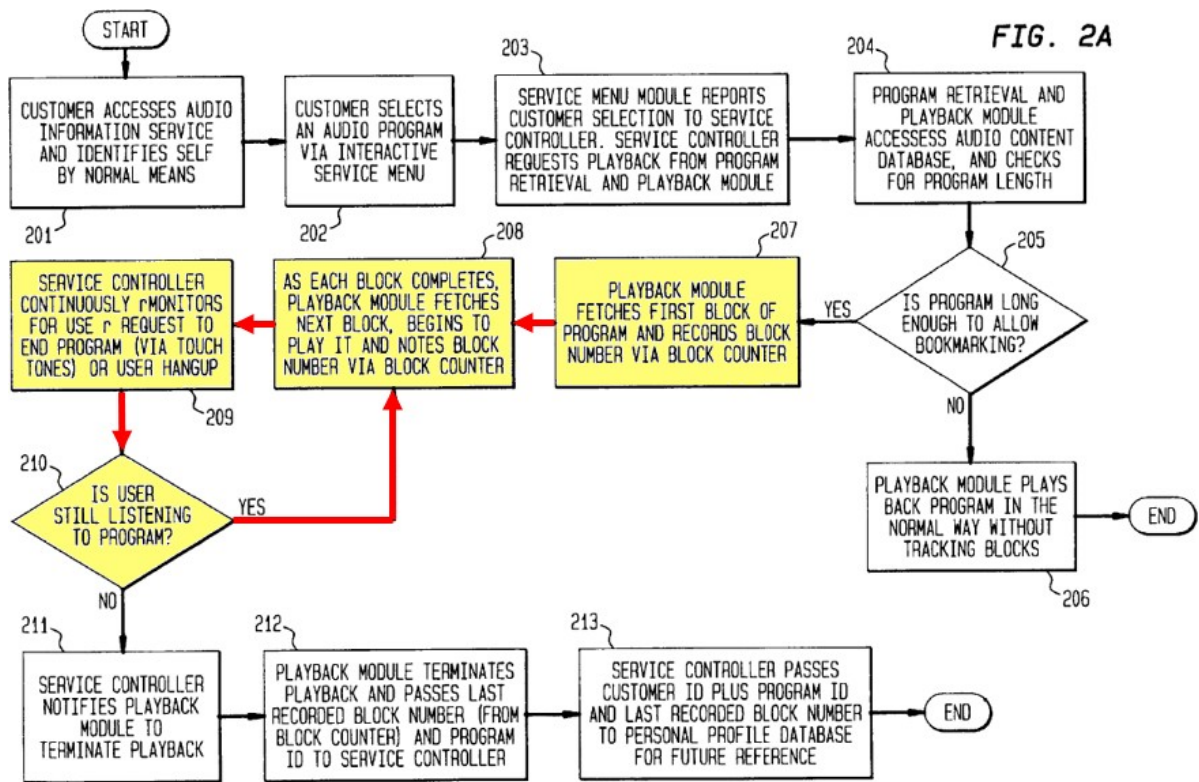
99.179. time or step information provided with the bookmark value.” (*Id.*, 5:65-6:6.) “The playback module then begins to play the program from the ~~bookmark~~book- mark[.]” (*Id.*; *see also id.*, 6:42-45 (bookmark is for positioning audio stream on PC).)

~~100.180.~~ Thus, Hanson ~~therefore~~ discloses or renders obvious ~~that the bookmark is for positioning the audio stream to the first position using the time offset. (EX-1002 ¶¶ 178–80.)~~claim element 12[d].

a. **Element 12[e]: The Audio Stream Is Stored as a Plurality of Digital Audio Files**

181. Element 12[e] recites that “the audio stream is stored as a plurality of digital audio files in a library, each digital audio file including a different segment of the audio stream.” Hanson and/or Yoshimura disclose or render obvious this claim element.

~~101.~~182. Hanson's audio programs are divided into multiple discrete blocks. (EX-1033; (Hanson), claim 20, Fig. 2A.) As illustrated in Figure 2A, the audio blocks are then played in sequential order:



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(*Id.*, Fig. 2A; *see also id.*, 4:23-32; ~~EX-1002 ¶182.~~) These blocks are stored in an

“audio content (program) database” of a network-based service. (~~EX-1033, *Id.*~~, 2:3-

16, 2:59-62, claim 8; ~~EX-1002 ¶182.~~) It would have been obvious to a

~~POSITA~~person of ordinary skill in the art to store these blocks as separate files. (~~EX-~~

~~1002 ¶182.~~) When the user device is a PC, the database may be accessed via the

Internet. (~~EX-1033, *Id.*~~, 6:30-34; ~~EX-1002 ¶182.~~)

183. Hanson therefore discloses or renders obvious storing the audio stream-
(e.g., audio program/book) as a plurality of digital audio files (e.g., blocks) in a-

library (e.g., audio content (program) database), each digital audio file (e.g., block) ~~includ~~ing a different segment of the audio stream (e.g., audio program/book). ~~(EX-1002~~

~~¶183.)~~

~~184.~~ ~~Even if Hanson did not disclose or render obvious this~~ This limitation, ~~it~~ would also have been obvious in view of Yoshimura. ~~(Id. ¶184.)~~

Yoshimura discloses ~~distributing~~ distributing multimedia content including audio over the ~~internet~~ inter- net. (EX-1006, (Yoshimura), 1778.) ~~Yo-~~ shimura Yoshimura discloses “dividing content into several segments” and storing the segments on a server as separate files. (*Id.*, 1780-81.)

~~102.~~ 185. ~~A~~ person of ordinary skill in the art would have been motivated to store Hanson’s audio blocks/~~seg-~~ ments segments as separate files for multiple reasons. ~~(EX-1002 ¶¶185-89.)~~

~~103.~~ 186. First, Yoshimura discloses the benefits of storing large files (e.g., audio files) as a plurality of sub-files, including improving cache efficiency and network ~~re-~~ source resource utilization. (EX-1006, (Yoshimura), 1778-80; ~~EX-1002 ¶186.~~)

~~104.~~ 187. Second, the combination represents nothing more than the simple ~~addition~~ addi- tion of one known element (e.g., Yoshimura’s storage as multiple files) to another known element (e.g., Hanson’s independently retrievable blocks) to obtain ~~predictable re-~~ sults (e.g., storage of different blocks as different files). ~~(EX-1002 ¶187); KSR, 550~~ predict- able results (e.g., storage of different blocks as different files). Third, the combina- tion represents the use of a known technique (e.g., Yoshimura’s file-based segmen- tation) to improve a similar device and method (e.g., Hanson’s block-based segmen-

tation) in the same way. Fourth, the combination applies a known technique (e.g., file-based segmentation as taught in Yoshimura) to a known device and method

U.S. at 417.

~~Third, the combination represents the use of a known technique (e.g., Yoshimura's file-based segmentation) to improve a similar device and method (e.g., Hanson's block-based segmentation) in the same way. (*Id.*)~~

~~Fourth, the combination applies a known technique (e.g., file-based segmentation as taught in Yoshimura) to a known device and method (e.g., Hanson's system~~

(e.g., Hanson's system for providing independently retrievable blocks) that is ready for improvement and yields predictable results (e.g., independently retrievable files). ~~(Id.)~~

A ~~POSITA~~person of ordinary skill also would have reasonably expected success at least because ~~stor-ing~~storing audio streams as a plurality of files in a library was ~~commonplace~~common- place well before the earliest possible priority date of the '740 patent. ~~(EX-1002 ¶188 (citing (E.g., EX-1004~~

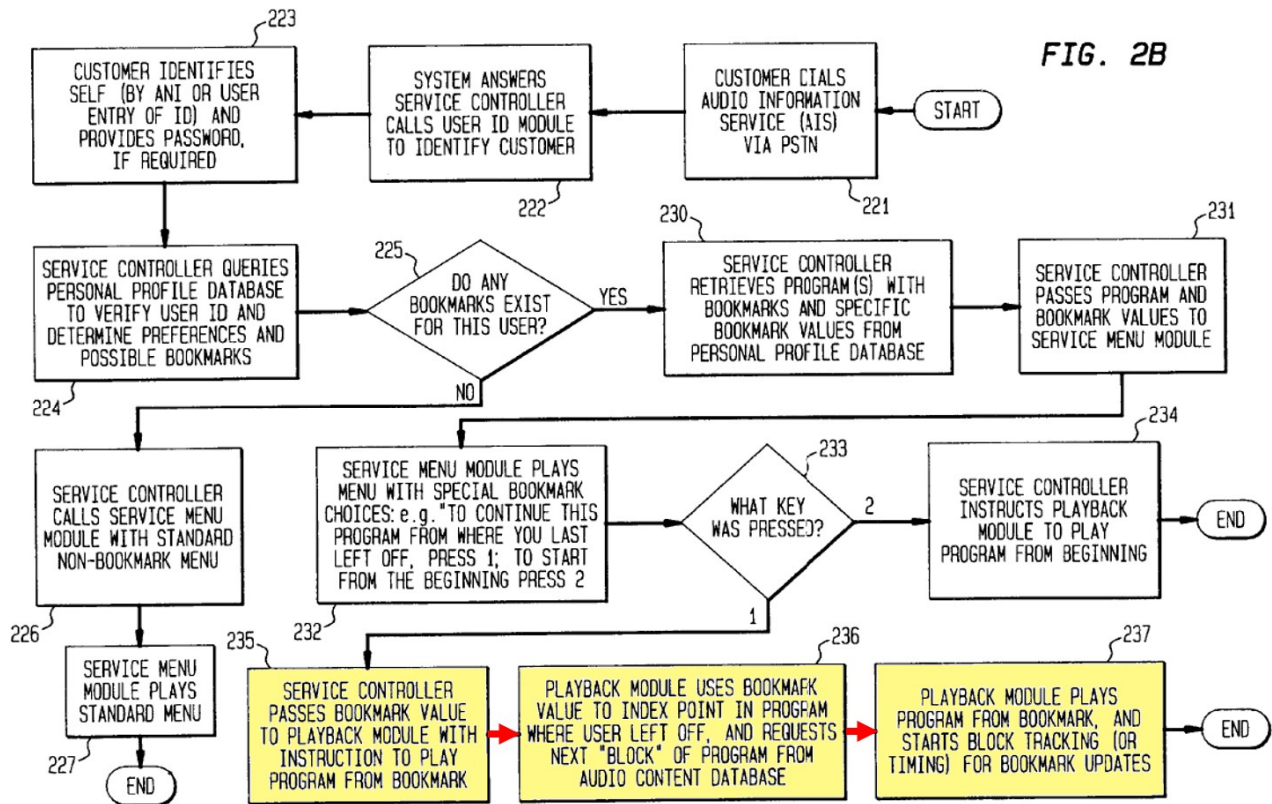
~~105,188. (Lindahl) ¶¶[0008]-[0010]; EX-1071 (Zuniga) ¶¶[0045]-[0047]→.)~~ In my own work, I routinely stored a plurality of files in a library. For example, for my courses, I maintain a library of related course materials and media including rec- orded lectures segmented by topic.

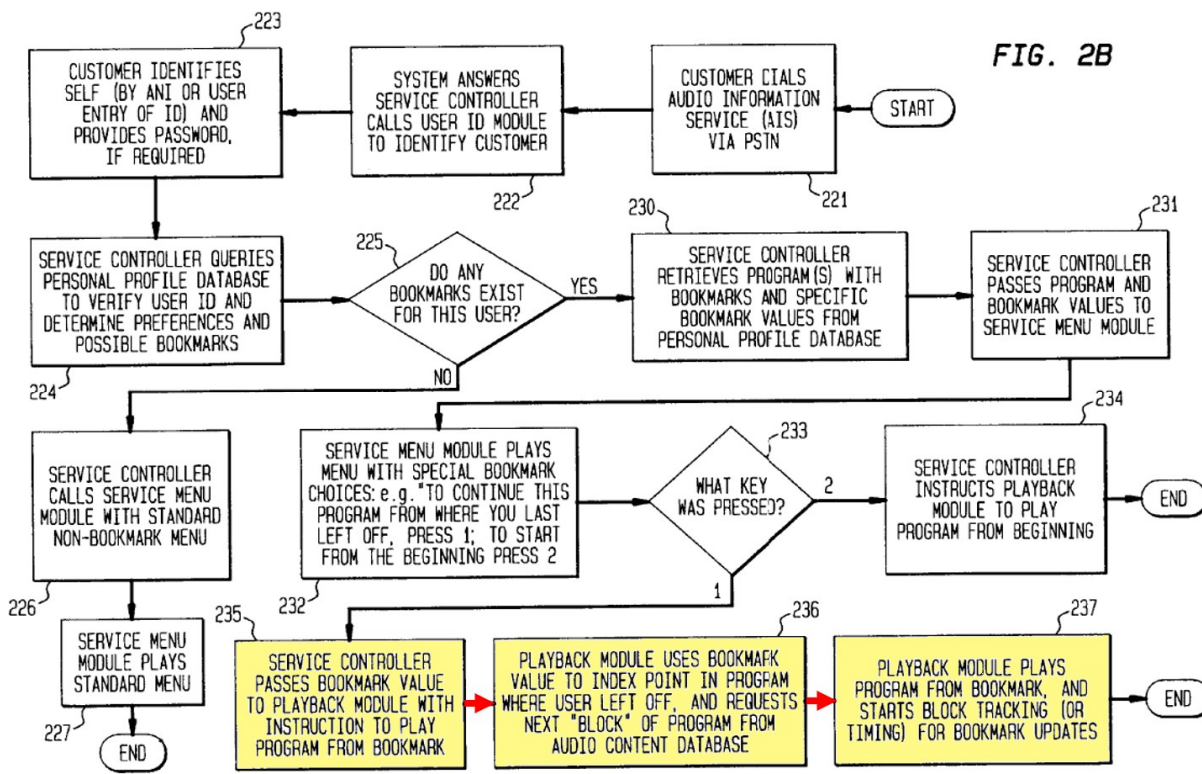
189. Thus, Hanson and/or Yoshimura disclose or render obvious claim ele- ment 12[e].

a. **Element 12[f][i]: Determining a First Digital Audio File**

190. Element 12[f][i] recites “determin[ing] a first digital audio file from the plurality of digital audio files to be loaded for playback with the media player from the first position.” Hanson and/or Yoshimura disclose or render obvious this claim element.

~~106,191.~~ 191. Hanson teaches selecting a block (e.g., audio file) to be





(EX-1033; Hanson, Fig. 2B; ~~EX-1002 ¶191~~.) For example, Hanson uses the bookmark value to index a point in the program where the user left off. (~~EX-1033, Id., 5:61-65, 4:23-26 (playback module fetches blocks of audio); EX-1002 ¶191~~)). The playback module then requests the next block from the audio content database. (Id.) Hanson therefore discloses or renders ~~obvious~~ obvi- ous determining (e.g., to request, retrieve, and/or play) a first digital audio file (e.g., block) from the plurality of digital audio files (e.g., blocks of audio program) to be loaded for playback with the media player from the first position (e.g., bookmarked position). (~~Supra §IX.A.7(See ¶¶181-89, above (storing audio stream as a plurality of audio files); EX-1002 ¶191~~)).

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192. ~~To~~I understand the ~~extent PO argues~~Patent Owner may argue that this limitation must be performed on the client device. In that case, this limitation would have been obvious-

in view of Hanson. Hanson's PC client may access the audio content via the Internet. (EX-1033, (Hanson), 6:32-35.) The client can either stream the content (e.g., "real-time audio program presentation") or download the material and store it on the client PC. (*Id.*, 6:33-39; ~~EX-1002 ¶192.~~) It would have been obvious to a ~~POSITA~~person of ordinary skill in the art that, regardless of whether the content was accessed ~~re-motely~~remotely or via local storage on the PC, the client PC would determine the relevant file in order to render it. (*Id.*)

193. ~~Even if Hanson did not disclose or render obvious this~~ This limitation, ~~it~~ would also have been obvious in view of Yoshimura. ~~(EX-1002 ¶193.)~~

Yoshimura discloses a SMIL file that defines a sequence of audio files making up a larger work. (EX-1006;

(Yoshimura), 1780.) Yoshimura’s SMIL file “provides the timing information for

playing or ~~dis—playing~~displaying” content. (*Id.*) Clients parse the SMIL file to

determine which segments should be played at any given time (and which segments

are coming up next). (*Id.*) The client then requests each segment based on its location

in the SMIL file. (*Id.*, Fig. 8, 1782 (“The mobile client receives the SMIL file and

requests streaming ~~ses—sion~~sessions by RTSP according to the SMIL file”).)

Accordingly, Yoshimura discloses or renders obvious a client device determining a

first digital audio file (e.g., ~~content-A~~content-A-1) from the plurality of digital audio

files (e.g., content-A-1 through content-A-3) to be loaded for playback with the

media player from the first position. (See ¶¶86-94, 99-104, above.)

~~1) from the plurality of digital audio files (e.g., content-A-1 through content-A-3) to be~~

~~loaded for playback with the media player from the first position. (Supra~~

~~§§VII.A.9.c, VII.A.10.b; EX-1002 ¶193.)~~

194. A POSITA A person of ordinary skill in the art would have been motivated

to use Hanson’s client device (e.g., PC) to determine (using, e.g., Yoshimura’s SMIL

file)-

a first digital audio file (e.g., file containing block with bookmarked position) from a plurality of audio files for playback with the media player on the client device from the first position for ~~mul- tiple~~multiple reasons. (~~EX-1002 ¶¶194-200.~~)

~~107.~~195. First, Hanson and Yoshimura both address a similar problem (e.g., ~~overcom- ing~~overcoming bandwidth issues when retrieving large audio files). (EX-1033, (Han- son), 6:35-37; EX-1006, (Yoshimura), 1778.) Yoshimura solved this problem by segmenting an audio stream, downloading the segments, and using a SMIL file to determine the appropriate smaller audio file to retrieve and/or render. (EX-1006, (Yoshimura), 1779-81; ~~EX-1002 ¶195.~~)

~~108.196.~~ Second, Yoshimura discloses the benefits of using a SMIL file at the client to determine the content file to retrieve and/or render including, for example, ~~improv-ing~~improving cache efficiency and network resource utilization. (EX-1006; ~~(Yoshi- mura)~~, 1779-80; ~~EX-1002.~~)

~~¶196.)~~

~~109.197.~~ Third, a ~~POSITA~~person of ordinary skill would have understood that Hanson's client PC was capable of determining the appropriate file for playback and that doing so was routine. (~~EX-1002 ¶197.)~~

198. Fourth, the combination (e.g., using Yoshimura's SMIL file on ~~Hanson's~~Han- son's PC client) represents nothing more than the simple addition of one known ~~element~~el- ement (e.g., Yoshimura's client-side selection of a file using a SMIL file) to another known ~~ele- ment~~element (e.g., Hanson's selection of a segment of an audio program) to obtain ~~predict-able~~

predictable results (e.g., client-side selection of an audio file). (~~Id.~~ ¶198); ~~KSR~~,
~~550 U.S. at 417.~~

Fifth, the combination represents the use of a known technique (e.g., ~~Yoshi-~~
~~mura's~~ Yoshimura's SMIL file) to improve a similar device and method (e.g.,
Hanson's selection of an audio segment) in the same way. (~~Id.~~)

Sixth, the combination applies a known technique (e.g., Yoshimura's client-
side selection using a SMIL file) to a known device and method (e.g.,
Hanson's bookmarking system) that is ready for improvement and yields
predictable results (e.g., client-side selection of a file corresponding to a
position in a larger work). (~~Id.~~)

~~110.199.~~ Moreover, a ~~POSITA~~person of ordinary skill would have reasonably expected success at least ~~be—cause~~because determining an audio file containing a bookmark was well known, routine, and widely understood. ~~(EX-1002 ¶199.)~~

200. Thus, Hanson and/or Yoshimura disclose or render obvious claim element 12[f][i].

i. **Element 12[f][ii]: The First Digital Audio File Is Selected Using the Time Offset and a Descriptor File**

201. Element 12[f][ii] recites “the first digital audio file selected using the time offset and a descriptor file, the descriptor file for ordering the plurality of digital audio files.” Hanson and/or Yoshimura render obvious this claim element.

202. As ~~discussed~~I discuss above, a ~~POSITA~~person of ordinary skill in the art would have been motivated to use ~~Yoshi—mura’s~~Yoshimura’s descriptor file (e.g., SMIL file) on Hanson’s PC client to determine the audio file. (*Supra* §IX.A.8.) A ~~POSITA~~(See ¶¶190-200, above.) A person of ordinary skill

would have understood that the above ~~combina- tion~~combination would have involved using ~~Hanson's~~Han- son's offset, comparing that time to the *parallels* in Yoshimura, and determining the audio file referenced in the *parallel* associated with the bookmarked offset. (~~EX-1002 ¶202.~~)

~~¶¶203.~~203. Accordingly, Hanson alone or in combination with Yoshimura renders ~~obvi- ous~~obvious selecting the first digital audio file (e.g., content-A-1) using the time offset (e.g., time at Hanson's bookmarked position) and a descriptor file (e.g., SMIL file). (~~¶.~~Thus, Hanson and/or Yoshimura render obvious claim element 12[f][ii].

~~¶¶201-03.)~~

~~1. — Limitation 12[f][iii]~~

~~j. Element 12[f][iii]: Descriptor File Including at Least One of a Start Time, an End Time, and a Play Time of Each Audio File~~

~~204. Element 12[f][iii] recites that the descriptor file includes “at least one of a start time, an end time, and a play time of each digital audio file in the plurality of digital audio files within the audio stream.” Yoshimura and/or Bulterman disclose or render obvious this claim element.~~

~~¶¶205.~~205. As I discuss above, Yoshimura discloses or at least renders obvious a descriptor file for ordering the audio files and including at least one of a start time, an end time, and a play time of each audio file. (~~Supra §VII.A.10.b;~~

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~~EX-1002 ¶205~~(See ¶¶99-105, above.)

~~Even if Yoshimura did not disclose or render obvious this~~This limitation, ~~it~~
would also have been obvious in further view of ~~Bulterman~~Bulter- man, a textbook
describing the SMIL 2.0

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206. standard. (~~EX-1002 ¶206.~~) Bulterman discloses that “begin, dur and end” are ~~gen-eral~~general timing control attributes of SMIL files. (EX-1007; (Bulter- man), 141-47; ~~EX-1002 ¶206.~~) “The begin attribute controls when a particular element starts, the-

dur attribute ~~con-trols~~controls the element's simple duration and the end attribute controls the end of the active duration.” (~~EX-1007~~Id., 141.)

~~113.207.~~ A person of ordinary skill in the art would have been motivated to ~~include~~in- clude start and end time (e.g., as disclosed by ~~the SMIL 2.0 Textbook~~Bulterman) for the reasons ~~discussed~~I discuss above. (~~Supra~~(See ¶¶99-105, above.))

~~§VII.A.10.b; EX-1002 ¶207.)~~

~~2. — Limitations 12[g]-12[h]~~

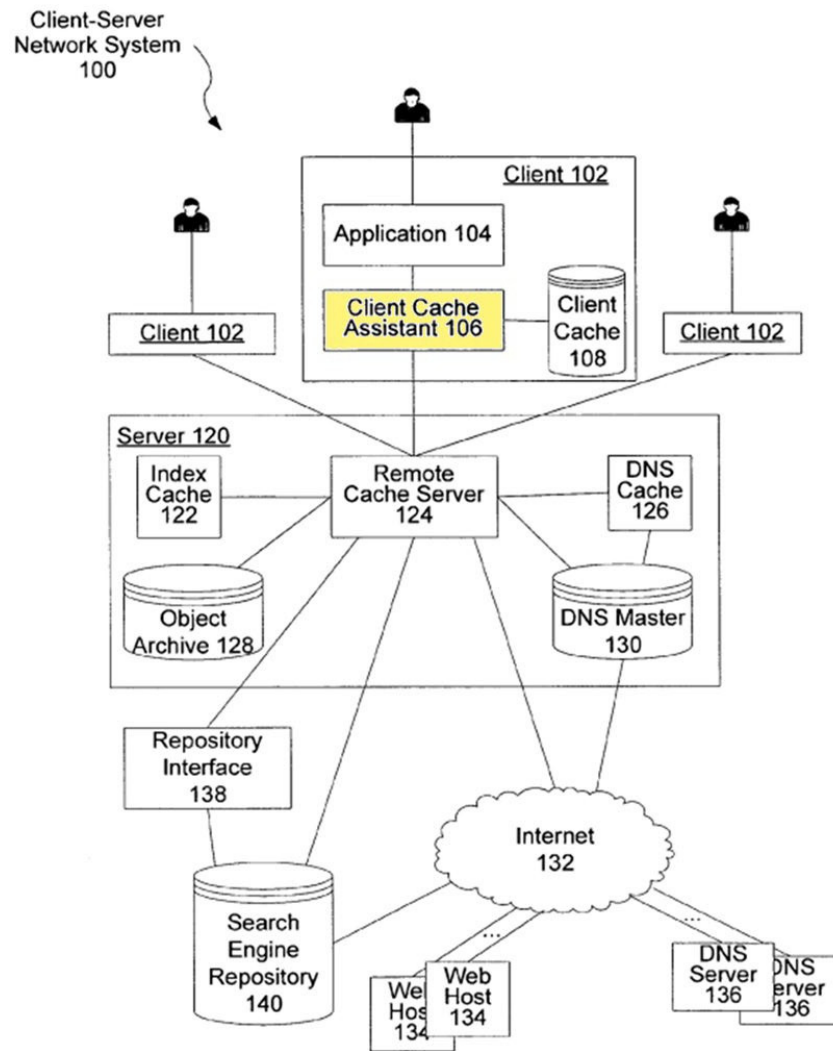
~~208.~~ Thus, Yoshimura and/or Bulterman disclose or render obvious claim element 12[f][iii].

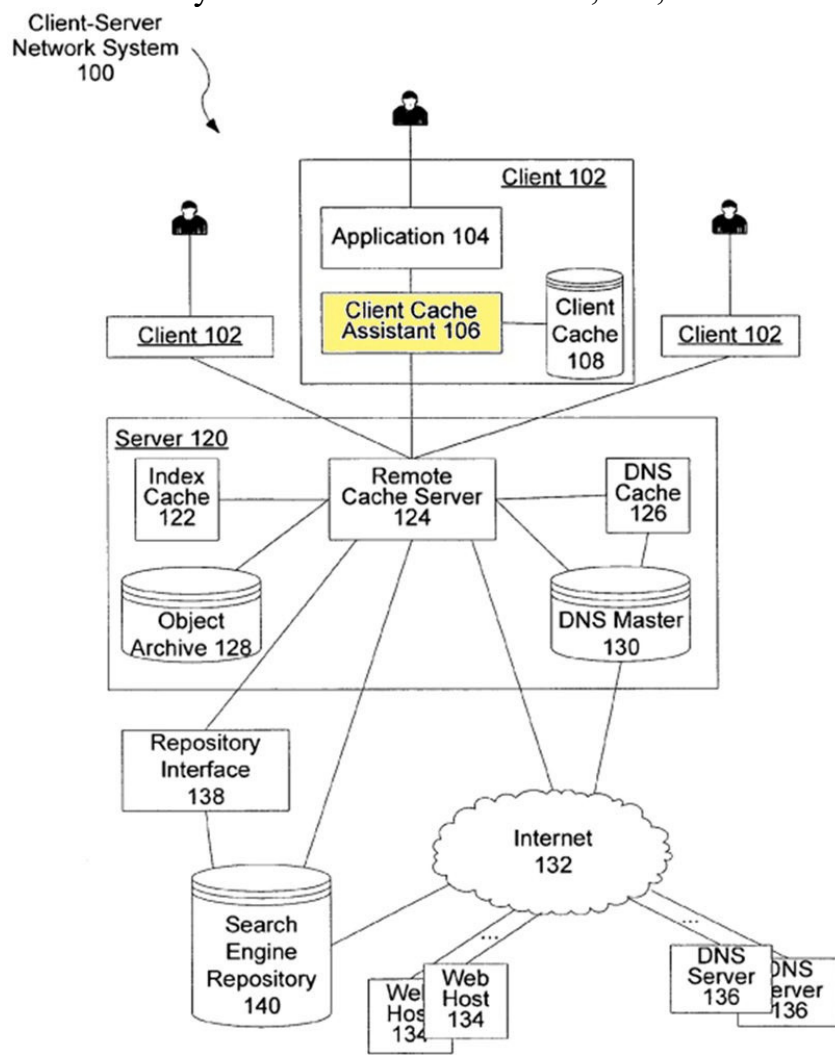
~~k.~~ Elements 12[g]-12[h]: Determining if the First Digital Audio File Is Resident Within the Computer and Downloading File

~~209.~~ Element 12[g] recites “determin[ing] if the first digital audio file is resident within the computer” and element 12[h] recites “download[ing] the first digital audio file from the library in dependence upon whether the first digital audio file is already resident within the computer.” Hanson, Yoshimura, and/or Fredrickson render obvious these claim elements.

~~114.210.~~ Fredrickson discloses a client device, illustrated in Figure 1 below, ~~compris-ing~~comprising a “client cache assistant”:

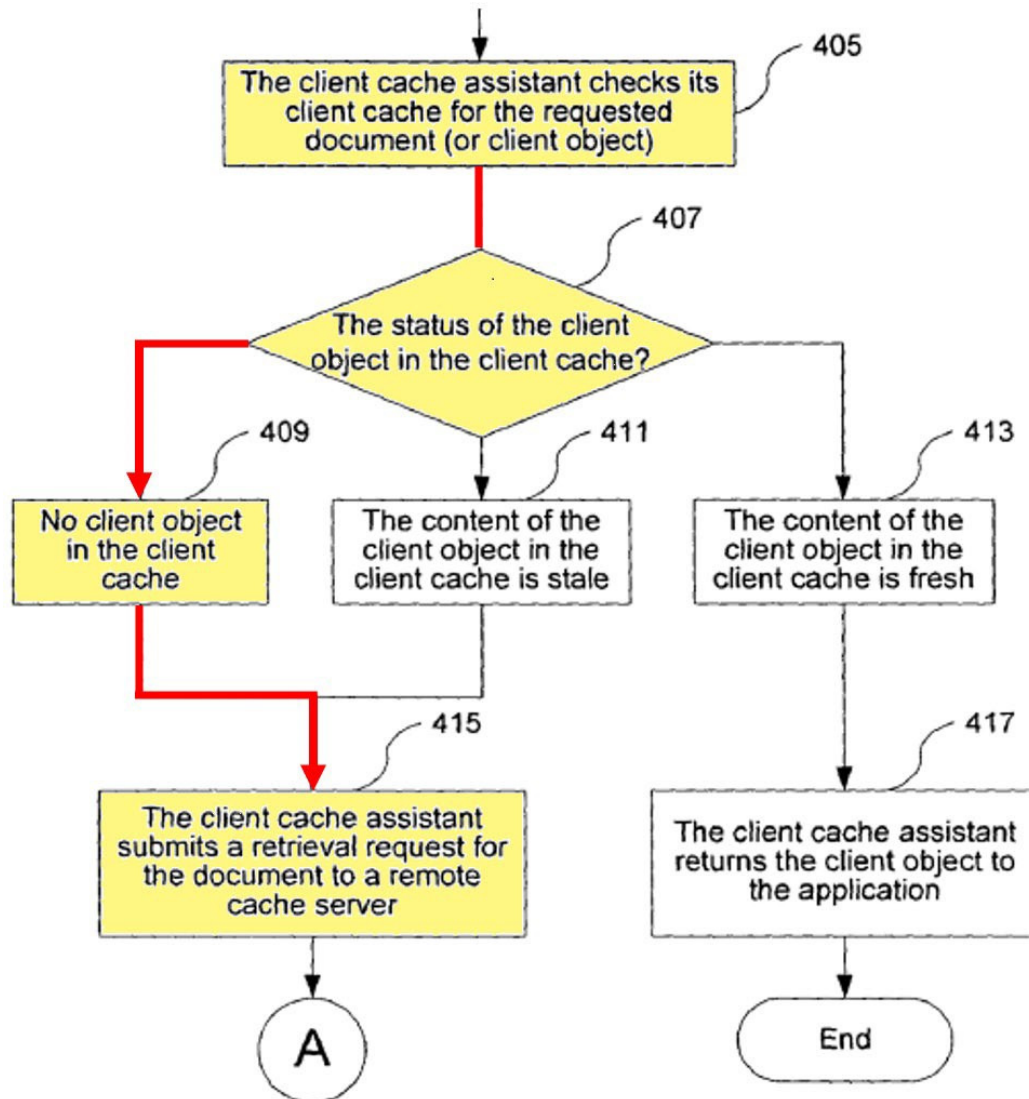
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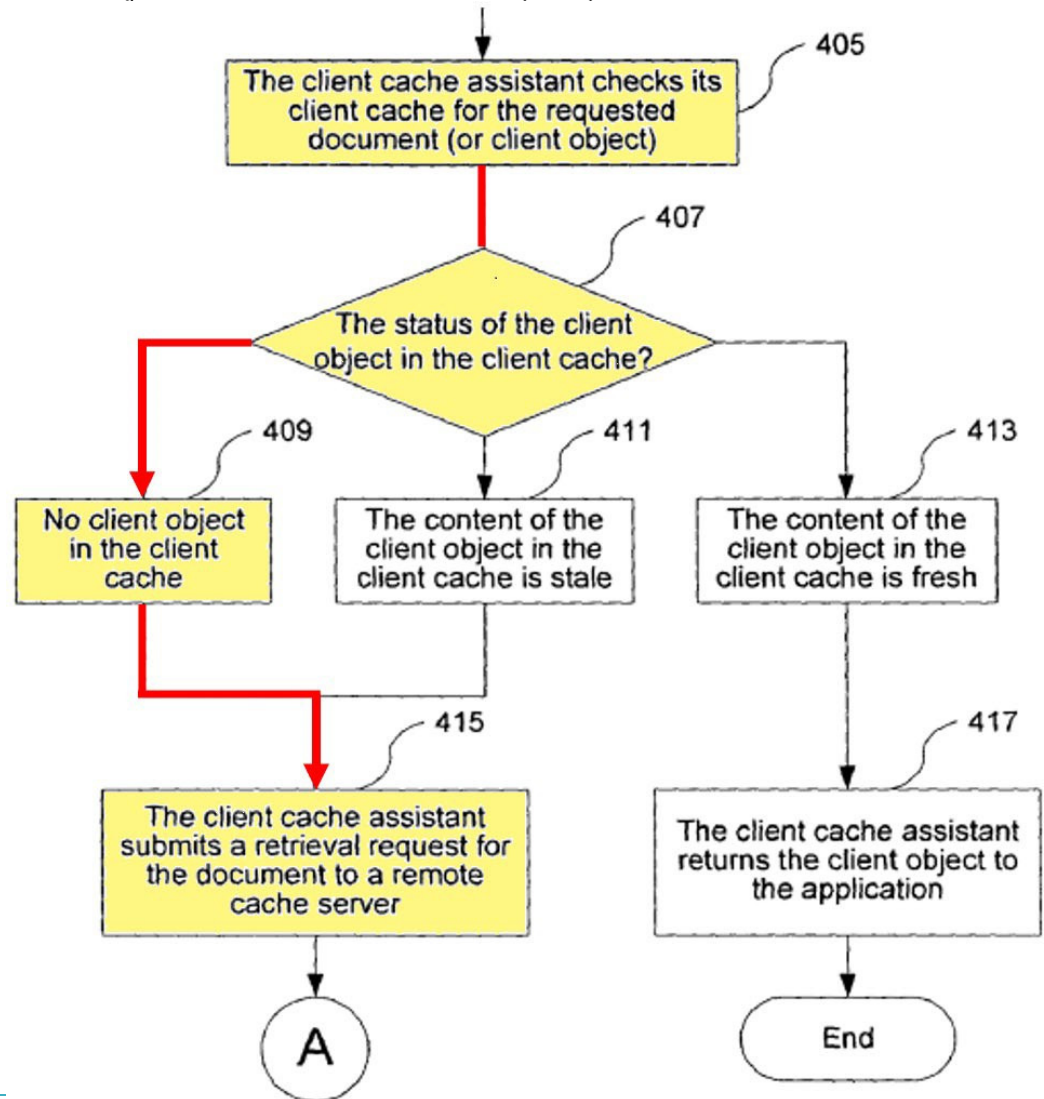




(EX-1034, [\(Fredrickson\)](#), Fig. 1; *see also id.*, 3:57-4:32; ~~EX-1002 ¶210.~~)

~~115.211.~~ When an application requests content (object, document, or file), the client cache assistant “checks if [Fredrickson’s] client cache has the requested ~~document~~doc- ument.” (EX-1034, [\(Fredrickson\)](#), 6:32-47; ~~EX-1002 ¶211.~~) If the requested content is not in the client cache, the client cache assistant retrieves the content from a library server, as shown in Figure 4. (~~EX-1034, *Id.*~~, 6:32-55, Fig. 4; ~~EX-1002 ¶211.~~)





~~(EX-1034,~~

(Id., Fig. 4 (excerpt); EX-1002 ¶211.)).

116.212. A POSITA A person of ordinary skill in the art would have been motivated to check whether a document was resident on the client in Hanson (e.g., PC) before ~~downloading~~down- loading (e.g., as disclosed by Fredrickson) for multiple reasons. ~~(EX-1002 ¶212-15.)~~

213. First, downloading documents ahead of time and storing them in cache was well-known and commonly done. ~~(EX-1002 ¶213 (citing~~ (E.g., EX-1007; (Bulterman), 394-97;

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EX-1051, (SMIL Standard), 71-73).) For example, Frederickson explains that-

“[p]refetching and ~~pre-loading~~preloading can be used in combination to decrease the latency observed by the user on client” devices. (EX-1034, (Fredrickson), 23:9-31.) A ~~POSITA~~person of ordinary skill also would have understood that in systems that prefetch ~~content~~con- tent, the client device looks first to local storage to see if the content is present. (*Id.*) If not, then the content must be obtained. (*Id.*) I have used prefetch and preload systems in my own work. For example, in my research on generalized multidimen- sional adaptation, I proposed a graph-based approach for expressing coding depend- encies between media objects as well as their relationships spatially and/or tempo- rally in order to be able to express and realize sophisticated policies for prefetching data in anticipation of a user’s needs in light of how a user is navigating through the media collection.

Second, the combination represents nothing more than the simple ~~addition~~addi- tion of known elements (e.g., Frederickson’s checking local cache and ~~prefetching/down- loading~~prefetch- ing/downloading) to another known element (e.g., Hanson’s retrieval of content) to obtain predictable results (e.g., checking for content locally before retrieving content from a server). (~~EX-1002 ¶214~~); ~~KSR, 550 U.S. at 417.~~

Third, the combination represents the use of a known technique (e.g., ~~Freder- ickson’s~~Frederickson’s checking local cache and prefetching/downloading) to improve a similar device and method (e.g., Hanson’s retrieval of content) in the same way. (*Id.*)

~~117.214.~~ Fourth, the combination applies a known technique (e.g.,

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Frederickson's checking local cache and prefetching/downloading) to a known

device and method (e.g., ~~Hanson's retrieval of content~~) that is ready for improvement and yields

~~pre-dictable results (e.g., checking local cache before retrieving content). (Id.)~~

Hanson's retrieval of content) that is ready for improvement and yields predictable results (e.g., checking local cache before retrieving content).

~~118:215.~~ Moreover, a ~~POSITA~~person of ordinary skill would have reasonably expected success at least ~~be—cause~~because checking for content on the device was well known, routine, and widely ~~un—derstood.~~ (EX-1002 ¶~~215.~~)understood.

119-216. Accordingly, Hanson, in combination with Yoshimura and/or ~~Fredrickson~~Fredrick-son, renders obvious determining (e.g., checking) if the first digital audio file (e.g., ~~con-tent~~content) is resident within the computer (e.g., in client cache) and downloading the first digital audio file from the library (e.g., server) in dependence upon whether the first digital audio file is already resident within the computer (e.g., when content is not already in client cache). ~~(Id. ¶¶209-16.)~~Thus, Hanson, Yoshimura, and/or Fredrickson render obvious claim elements 12[g] and 12[h].

j.l. Element 12[i]: Loading the First Digital Audio File for Playback

217. Element 12[i] recites “load[ing] the first digital audio file for playback with the media player from the first position.” Hanson and Yoshimura disclose this claim element.

218. Hanson teaches retrieving a block of content and rendering playback from the bookmarked position. (EX-1033, (Hanson), 5:61-6:6 (“The playback ~~module~~mod- ule then requests the next block of program from the audio content database[.]-

The playback module then begins to play the program from the bookmark”); ~~EX-1002 ¶(218.)~~”).
In ~~embodi-ments~~

embodiments where the client is a PC, the file associated with the bookmarked ~~position~~position is loaded onto the PC and the PC's media player plays the content from the ~~book-marked~~bookmarked position. (~~EX-1002 ¶218.~~) Yoshimura also discloses loading audio file for playback. (EX-1006, (Yoshimura), 1785, Figs. 3, 6, 8; ~~EX-1002 ¶218.~~.)

219. Thus, Hanson, ~~alone or in combination with~~ and Yoshimura, disclose claim element 12[i].

220. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-mura, Bulterman, and Fredrickson render claim 12 obvious as a whole.

2. Claim 13

~~120.~~221. Claim 13 depends from claim 12 and further recites “wherein the first position is determined when the media player is stopped while playing the audio stream.” Hanson discloses ~~this limitation.~~ (~~EX-1002 ¶¶217-20.~~)the additional claim element of claim 13.

B. Claim 13

~~121.~~222. Hanson's position in a selected audio service is “detected and associated with a user when the user terminates an audio service.” (EX-1033, (Hanson), 3:38-50, Fig. 2A; ~~supra §IX.A.2; EX-1002 ¶222.~~) ~~Hanson therefore discloses the first position being~~see ¶¶166-168, above.)

122.223. Hanson therefore discloses the first position being determined (e.g., detected) when the media player (e.g., on user's PC) is stopped (e.g., terminated) while playing the audio stream (e.g., audio service). ~~(EX-1002~~Thus, Hanson discloses the additional claim element of claim 13.

~~¶¶221-24.)~~

~~**VIII. GROUND 2B: CLAIMS 14-17 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 2A REFERENCES AND SULL.**~~

224. Accordingly, for at least the reasons I discuss above, Hanson, Yoshimura, Bulterman, and Fredrickson render claim 13 obvious as a whole.

D. ~~Claims 14-17 depend, directly or indirectly, from claim 12. Would Have Been Obvious in View of Hanson, Yoshimura, Bulterman, Fredrickson, and Sull.~~

225. As ~~discussed~~I discuss above, Hanson, Yoshimura, Bulterman, and Fredrickson disclose or render obvious each limitation of claim 12. (See ¶¶158-220, above.) For at least the reasons I discuss below, claims 14-17 would have been obvious in further view of Sull.

1. Claim 14

123-226. Claim 14 depends from claim 12 and further recites “wherein the first position is determined in response to a make bookmark command.” (Supra §IX.A.) Hanson and/or Sull disclosesdisclose or rendersrender obvious the additional limitationsclaim element of claimsclaim 14-17.

1. ~~Claim 14~~

Hanson’s user can “terminate the program by selection of specified keys” (EX-1033, (Hanson), 4:34-51), which causes a bookmark to be created. (*Id.*, 4:41-51; supra

124-227. §IX.A.4; EX-1002 ¶227.)see ¶¶172-174, above.) Thus, Hanson discloses that the first position is ~~deter-mined~~determined in response to a make bookmark command (e.g., selecting the appropriateappropri- ate key, which creates bookmark and terminates program). (EX-1002 ¶227.)

125-228. It also would have been obvious to a POSITAperson of ordinary skill in the art to use specified keys in ~~Han-son’s~~Hanson’s system to issue a “make

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bookmark command” wherein the position is ~~deter—mined~~determined in response to

the command, so that users could resume at a desired point (rather than a default

bookmark position corresponding to the termination point).~~(Id. ¶228.)~~

~~Even if Hanson did not disclose or render obvious this~~

~~126.229.~~ This limitation, ~~it~~ would also have been obvious in view of Sull.

~~(Id. ¶229.)~~ Sull ~~discloses~~dis- closes that a user can create a bookmark (and therefore determine a first position) by selecting an “add-bookmark control.” (EX-1005 (Sull) ¶¶[0208]-[0209], Figs. 10- 11, ~~EX-1002 ¶229.~~)

~~127.230.~~ A ~~POSITA~~person of ordinary skill in the art would have been motivated to ~~modify~~mod- ify Hanson so that Hanson’s system could determine a position in response to a bookmark command (e.g., as disclosed in Sull) for multiple reasons. ~~(EX-1002 ¶¶230-35.)~~

~~128.231.~~ First, determining a position in response to a bookmark command was well-known and commonly implemented. ~~(Id. ¶231 (citing~~ (See generally, e.g., EX-1004, (Lindahl), EX-1003 (DTB).)

~~129.232.~~ Second, the combination represents the simple addition of one known element (e.g., Sull’s determining a position in response to a make bookmark ~~command~~com- mand) to another known element (e.g., Hanson’s bookmarking system) to obtain a predictable result (e.g., Hanson’s client PC determining a position in response to a make bookmark command). Third, the combination represents the use of a known technique (e.g., ~~book—mark—command~~). ~~(EX-1002 ¶232); KSR, 550 U.S. at 447.~~ providing a make bookmark command) to improve a similar device and method (e.g., Hanson’s bookmarking) in the same way. Fourth, the combination applies a known technique (e.g., determining a position in response to a bookmark command)

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to a known device and method (e.g., Hanson's bookmarking) that is ready for

improvement and yields predictable results (e.g., determining the position in

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~~Third, the combination represents the use of a known technique (e.g., provid-~~
~~ing a make bookmark command) to improve a similar device and method (e.g., Han-~~
~~son's bookmarking) in the same way. (Id.)~~

~~Fourth, the combination applies a known technique (e.g., determining a posi-~~
~~tion in response to a bookmark command) to a known device and method (e.g., Han-~~
~~son's bookmarking) that is ready for improvement and yields predictable results~~

(e.g., ~~determining the position in~~ response to a make bookmark command, allowing the user to choose the ~~bookmarked~~book- marked position). ~~(Id.)~~

~~130.233.~~ A POSITA A person of ordinary skill would also have reasonably expected success in combining Sull’s make bookmark command with Hanson’s PC client at least ~~because~~be- cause bookmark ~~com- mands~~commands were well-known and commonly implemented. ~~(EX-1002 ¶233 (citing~~ (See generally, e.g., EX-1004, (Lindahl), EX-1003 (DTB).)

A. — Claim 15

234. Thus, Hanson and/or Sull ~~discloses~~disclose or ~~renders~~render obvious ~~determining~~the additional claim element of claim 14.

235. Accordingly, for at least the reasons I discuss above, Hanson, Yoshimura, Bulterman, Fredrickson, and Sull render claim 14 obvious as a whole.

2. Claim 15

~~131.236.~~ Claim 15 depends from claim 12 and further recites “wherein the time offset is determined by subtracting a predetermined value from the point in time of the first position from the beginning of the audio stream. ~~(Supra §VIII; EX-1002 ¶237).~~”
Sull ~~discloses~~ or renders obvious the additional claim element of claim 15.

237. As I discuss above, Sull ~~discloses~~ or renders obvious ~~determining the time offset by subtracting a predetermined value from the point in time of the first position from the beginning of the audio stream.~~ (See ¶¶146-154, above.)

~~132-238.~~ A ~~POSIT~~a person of ordinary skill in the art would have been motivated to ~~incorporate in-~~ corporate Sull's time offset ~~de-~~
~~termination~~determination into Hanson's system (as modified in view of other references as ~~dis-cussed~~I discuss above for claim 12) for multiple reasons. ~~(EX-1002 ¶¶238-43.)~~

~~133-239.~~ First, Sull discloses the benefits of its approach, explaining "such ~~rewinding~~re- winding could help refresh the user's memory." (EX-1005 ~~(Sull) ¶[0014]; EX-1002 ¶239.)~~)

Second, the combination represents nothing more than the simple ~~addition~~addi- tion of one known element (e.g., Sull's rewinding from a termination point) to ~~another an-~~ other known element (e.g., Hanson's bookmark) to obtain predictable results (e.g., ~~book—marks~~bookmarks set at a certain time prior to a termination point). ~~(EX-1002 ¶240); KSR, 550 U.S. at 417.~~

134.240. Third, the combination represents the use of a known technique (e.g., Sull’s rewinding from termination) to improve a similar device and method (e.g., Hanson’s bookmarks) in the same way. Fourth, the combination applies a known technique (e.g., Sull’s rewinding from Hanson’s bookmarks) in the same way. (Id.) termination) to a known device and method (e.g., Hanson’s bookmarking systems and methods) that is ready for improvement and yields predictable results (e.g., a bookmark from a certain time prior to a termination point).

~~Fourth, the combination applies a known technique (e.g., Sull’s rewinding from termination) to a known device and method (e.g., Hanson’s bookmarking systems and methods) that is ready for improvement and yields predictable results (e.g., a bookmark from a certain time prior to a termination point). (Id.)~~

135.241. Moreover, a POSITA person of ordinary skill would have reasonably expected success at least ~~be cause~~ because subtracting a predetermined offset (e.g., rewinding) from the point of ~~termi nation~~ termination was well known, routine, and commonly understood. ~~(EX 1002 ¶241.)~~

242. Thus, Sull discloses or renders obvious the additional claim element of claim 15.

mura, Bulterman, Fredrickson, and Sull render claim 15 obvious as a whole.

3. Claim 16

244. Claim 16 depends from claim 12 and further recites “wherein the com- puter code is further configured to cause said computer to[] transfer the bookmark to another computer.” Sull discloses or renders obvious the additional claim element of claim 16.

244.245. Sull discloses transferring bookmarks from one user to another user, including by transferring bookmarks from one mobile device to another. (EX-1005 (Sull) ¶¶[0277]-[0278], [0251]-[0269], Figs, 16-17, 20; EX-1002 ¶245.)

245.246. A ~~POSITA~~person of ordinary skill in the art would have been motivated to ~~transfer~~trans- fer Hanson’s bookmark from one client PC to another (e.g., as disclosed in Sull) for the reasons ~~discussed in Ground 1A. (Supra §VII.D; EX-1002 ¶246)~~I discuss above. (See ¶¶123-133, above.)

247. Moreover, Sull explains that the benefit of bookmarks includes the ~~ability~~abil- ity to resume a multimedia presentation on a different device. (EX-1005 (Sull)

¶[0013] (“a user

243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-
_who starts playing a video at work leaves the office and desires to continue watching
the video at home”); ~~EX-1002 ¶(247.)”.)~~

248. Thus, Sull discloses or renders obvious the additional claim element of
claim 16.

~~243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-~~
~~mura, Bulterman, Fredrickson, and Sull render claim 16 obvious as a whole.~~

4. Claim 17

~~This claim would have been obvious to a POSITA for the reasons discussed with respect to claim 16 and claim 17 in Ground 1A. (Supra §§VII.D-VII.E, X.C; EX-1002 ¶¶250-51.)~~

250. Claim 17 depends from claim 16 and further recites “wherein the other computer is for loading a digital audio file including the first position for playback by an other media player, the media player and the other media player using one of the same audio formats and different audio formats.” The additional claim element of claim 17 would have been obvious to a person of ordinary skill in the art for the reasons I discuss above. (See ¶¶123-145, 244-249, above.)

251. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi- mura, Bulterman, Fredrickson, and Sull render claim 17 obvious as a whole.

III.VII. SECONDARY CONSIDERATIONS OF NONOBVIOUSNESS

~~Where, as here, a strong *prima facie* obviousness showing exists, I am not aware of any secondary considerations may not dislodge the obviousness conclusion. *Leapfrog Enters. v. Fisher Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). Petitioners are aware of no of non-obviousness. If Patent Owner identifies any~~

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alleged evidence supporting a claim for of secondary considerations:

243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-

~~IX. DISCRETIONARY DENIAL UNDER § 314(A) IS NOT APPROPRIATE.~~

~~Efficiency, fairness, and the merits support institution. *Apple v. Fintiv*,~~

~~IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020) (“*Fintiv*”).~~

~~A. Factor 1: Potential Stay~~

~~On March 20, 2024, PO sued Petitioners for infringement of the ’740 patent in the Eastern District of Virginia (“EDVA”) in *Audio Pod IP, LLC v. Amazon.com, Inc.*, 2:24-cv-00185 (E.D. Va.) (“*Audio Pod I*” or “the Litigation”). Petitioners will movefu- ture, I reserve the right to respond to stay the Litigation pending resolution of this and related IPRs challenging the patents asserted in the Litigation. The EDVA routinely grants motions to stay~~

~~cases pending IPR proceedings, including pre institution, when asserted patents are~~
243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-
~~challenged. See, e.g., Sec. First Innovations, LLC v. Google LLC, No. 2:23-cv-~~
~~00097, 2024 WL 234720 (E.D. Va. Jan. 22, 2024); Sharpe Innovations, Inc. v. T-~~
~~Mobile USA, Inc., No. 2:17-cv-00351, 2018 WL 11198604 (E.D. Va. Jan. 10, 2018).~~

~~On March 14, 2025, Petitioner Audible, Inc. (“Audible”) filed a declaratory~~
~~judgment action, seeking a declaration that Audible does not infringe the ’740 patent,~~
~~against PO in Audible, Inc. v. Audio Pod IP, LLC, 1:25-cv-02158 (S.D.N.Y.) (the~~
~~“Audible DJ Action”). That action seeks a declaration of noninfringement only; the~~
~~validity of the ’740 patent is currently not at issue. However, Audible expects va-~~
~~lidity to become an issue in that case and, once it does, Audible expects to move to~~
~~stay the Audible DJ Action in view of this IPR.~~

~~Thus, this factor weighs against denial.~~

B. — Factor 2: Proximity of Trial to FWD

~~The EDVA has not set a trial date in the Litigation. The median time to trial~~
~~in civil cases in the EDVA for 2024 was 14.6 months⁴, but it is clear a longer sched-~~
~~ule will be needed here as the case has been pending for nearly 12 months with~~
~~virtually no activity. (See *infra* §XII.C.) The Audible DJ Action was filed recently,~~

⁴~~See U.S. District Courts Combined Civil and Criminal Federal Court Manage-~~
~~ment Statistics (December 31, 2024), available at~~
~~https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distpro-~~
~~file1231.2024.pdf.~~

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~~has no trial date, validity is not currently at issue, and SDNY’s time to trial of 39.3 months is much longer than this proceeding. Thus, this factor weighs against denial. *Amazon.com, Inc. v. Nokia Technologies OY*, IPR2024-01140, Paper 9 at 9 (P.T.A.B. February 12, 2025) (factor weighs against denial when there is no trial date); *Aptiv Services US, LLC v. Microchip Technology, Inc.*, IPR2024-00646, Paper 11 at 32 (P.T.A.B. September 25, 2024) (same); see *Eriessson Inc. v. XR Communi-cations LLC*, IPR2024-00613, Paper 9 at 34 n.12 (P.T.A.B. October 9, 2024) (“me-dian-time-to-trial information” not useful where circumstances “do[] not reflect the normal course of a litigation”).~~

C. — Factor 3: Investment in Parallel Proceeding

~~PO filed its complaint in the Litigation on March 20, 2024 . Petitioners filed a motion to dismiss or transfer on May 31, 2024 and no hearing date has been set for that motion. Otherwise, the parties have invested very little in the Litigation. Petitioners have not answered the complaint. The parties have not had a Rule 26(f) conference and fact discovery has not yet opened. The parties have not exchanged proposed claim constructions or submitted claim construction briefs. No expert reports have been served. No case schedule has been set. Thus, much work still remains, including fact discovery, claim construction, expert reports, expert discovery, dispositive motions, pretrial motions, and trial. Likewise, there has been no investment in the Audible DJ Action.~~

~~Because the remaining investment in the Litigation and Audible DJ Action~~
243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-
significantly outweighs any investment made thus far, this factor weighs against de-
nial. *Samsung Electronics Co. v. Empire Technology Development LLC*, IPR2024-
00896, Paper 15 at 13 (P.T.A.B. December 13, 2024) (factor weighs against denial
where *Markman* hearing and close of fact and expert discovery were after institution
deadline); *Ericsson*, IPR2024-00613, Paper 9 at 34-35 (factor weighs against denial
where “most efforts from the parties and court will take place after institution”);
Amazon.com, IPR2024-01140, Paper 9 at 9-10.

D. — Factor 4: Overlapping Issues

~~If this IPR is instituted and the Litigation and/or Audible DJ Action are stayed,~~
Petitioners could not pursue in those proceedings any invalidity ground raised or that
could have been reasonably raised in this IPR. *Cal. Inst. of Tech. v. Broadcom Ltd.*,
25 F.4th 976 (Fed. Cir. 2022). ~~If this IPR is instituted and the Litigation and/or~~
~~Audible DJ Action are not stayed,~~ Petitioners hereby stipulate not to pursue in those
proceedings any ground of invalidity, against any claim challenged herein, that was
raised or reasonably could have been raised in this Petition. This factor weighs heav-
ily against discretionary denial. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-
01019, Paper 12 (P.T.A.B. Dec. 1, 2020).

~~E. — Factor 5: The Parties~~

243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-
~~The parties are the same, but it is unlikely that the Litigation or Audible DJ~~
~~Action will go to trial before a final written decision is entered in this IPR. Thus, this~~
~~factor is neutral. See Google LLC v. Jawbone Innovations, LLC, IPR2022-00630,~~
~~Paper 10 at 14 (P.T.A.B. Sept. 13, 2022).~~

~~F. — Factor 6: Other Circumstances~~

~~The merits of this Petition are compelling, as demonstrated above, which fa-~~
~~vors institution. Fintiv, IPR2020-00019, Paper 11 at 18. Further, denying institution~~
~~would negate Congress’s intent in providing a 1-year period to file petitions and~~
~~would encourage forum shopping as patent owners look to shield their patents from~~
~~PTAB scrutiny by seeking judges with aggressive case schedules.~~

~~Thus, the Board should not decline institution under § 314(a).~~

~~X. — DISCRETIONARY DENIAL UNDER § 325(D) IS NOT~~
~~APPROPRIATE.~~

~~The Office has not considered any of the references relied on in the Grounds~~
~~presented herein. Nor has the Office considered “substantially the same prior art or~~
~~arguments.” 35 U.S.C. §325(d). This is sufficient to avoid denial. Shenzhen Chic~~
~~Elects. v. Pilot, Inc., IPR2023-00810, Paper 12 at 21 n.11 (P.T.A.B. Nov. 8, 2023)~~
~~(denial inappropriate where challenges based on new art/arguments “address all~~
~~challenged claims”). As shown, the references here clearly disclose each claim ele-~~

~~ment. Accordingly, they are not and could not be cumulative of previously con-~~
243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-
~~sidered references, absent material error by the Examiner. See Quasar Sci. LLC v.~~
~~Colt Int'l Clothing, Inc., IPR2023-00611, Paper 10 at 14 (P.T.A.B. Oct. 10, 2023).~~
~~Thus, the Board should not deny institution under §325(d).~~

XI. — STATEMENT REGARDING PARALLEL PETITIONS

~~This Petition is one of two that Petitioners are concurrently filing against the~~
~~'740 patent. The petitions challenge different claims and are necessary due to the~~
~~claims' distinct subject matter. Specifically, the two independent claims of the '740~~
~~patent are directed to different subject matter. Claims 12-17, addressed herein, recite~~
~~creating a bookmark using a time offset and descriptor file, selecting a file from a~~
~~plurality of audio files, checking whether the file is resident on the computer, and~~
~~downloading and playing the file. Claims 1-11 and 18, by contrast, recite sending a~~
~~request for audio to a server, loading a server list, maintaining service level statistics~~
~~for servers, selecting a first server, downloading content, selecting a second server,~~
~~and downloading content from the second server. Each petition addresses one inde-~~
~~pendent claim (and its dependents). Each petition is based on different prior art~~
~~references. Thus, the petitions represent materially different challenges to a unique~~
~~subset of the claims, which supports institution. Align Tech., Inc. v. 3Shape A/S,~~
~~IPR2021-01309, Paper 11 at 11-13 (P.T.A.B. Feb. 9, 2022); Samsung Elecs. Co.,~~

~~Ltd. v. Mojo Mobility Inc., IPR2023-01089, Paper 1.1 at 25-27 (P.T.A.B. Jan. 11, 2024). Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-2024).~~

~~Both petitions rely on the same expert declarant and are being filed concurrently. Thus, the cases can track the same schedule and the parties can maximize the efficiency of depositions, briefing, and oral argument. Also, any potential inefficiency or disadvantage to PO can be resolved by consolidating the two proceedings. 35 U.S.C. §325(d); 37 C.F.R. §42.122. To the extent there is overlap between the two proceedings, these considerations favor institution. Visa, Inc. v. Cortex MCP, Inc., IPR2024-00487, Paper 8 (P.T.A.B. Aug. 2, 2024).~~

~~PO has not yet identified which claims it will assert in the Litigation. Accordingly, the Board should allow Petitioners to explain and describe in sufficient detail where each limitation of each of the claims is disclosed or taught by the prior art. See AliveCor, Inc. v. Apple Inc., IPR2023-00949, Paper 8 at 22-31 (P.T.A.B. Jan. 9, 2024). For this reason, fairness and the public benefit support institution of both petitions.~~

~~Pursuant to the Board's Consolidated Trial Practice Guide §II.D.2, Petitioners provide the following information to aid the Board's institution decision.~~

~~(1) Ranking of Petitions—Petitioners request that the Board consider the merits of this Petition first.~~

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~~250.252. Succinct Explanation of Differences — This Petition~~

~~243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-challenges independent claim 12 and its dependents; the concurrently filed petition challenges independent claim 1 and its dependents, which have a different focus.~~

IV.VIII. CONCLUSION

~~Amazon requests that the Board institute trial and cancel all challenged claims.~~

~~XII. MANDATORY NOTICES, GROUNDS FOR STANDING, AND FEE PAYMENT~~

~~Pursuant to 37 C.F.R. §42.8(a)(1), the mandatory notices identified in 37 C.F.R. §42.8(b) are provided below as part of this Petition.~~

~~A. — Real Party In Interest (37 C.F.R. §42.8(b)(1))~~

~~Amazon.com, Inc., Amazon.com Services LLC, Amazon Web Services, Inc. and Audible, Inc. are the real parties in interest.~~

~~B. — Related Matters (37 C.F.R. §42.8(b)(2))~~

~~PO asserted the '740 patent against Petitioners in a patent infringement lawsuit captioned *Audio Pod IP, LLC v. Amazon.com, Inc. et al.*, No. 2:24-cv-00185 (E.D. Va., filed March 20, 2024). Audible also filed a complaint for declaratory judgment of noninfringement of the '740 patent, captioned *Audible, Inc. v. Audio Pod IP, LLC*, No. 1:25-cv-02158 (S.D.N.Y., filed March 14, 2025).~~

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~~C — Lead and Backup Counsel (37 C.F.R. §42.8(b)(3))~~

243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-

~~Petitioners provide the following designation of counsel, all of whom are~~

~~included in Customer No. 20,995 identified in Petitioners' Power of Attorney.~~

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~~Lead Counsel~~	~~Back-up Counsel~~
~~245. Accordingly, for at least the reasons I discuss above, I am~~ ~~Colin B. Heideman (Reg. No. 61,513)~~ ~~2cbh@knobbe.com~~ ~~BoxSEAZNL2185LP6@knobbe.com~~ ~~Postal and Hand-Delivery Address:-~~ ~~Knobbe, Martens, Olson, & Bear, LLP~~ ~~925 4th Ave., Ste. 2500~~ ~~Seattle, WA 98104~~ ~~Telephone: (206) 405-2000~~ ~~Facsimile: (206) 405-2001~~	~~Joseph R. Re (Reg. No. 31,291)~~ ~~2jrr@knobbe.com~~ ~~Postal and Hand-Delivery Address:-~~ ~~Knobbe, Martens, Olson, & Bear, LLP~~ ~~2040 Main Street, 14th Floor~~ ~~Irvine, CA 92614~~ ~~Telephone: (949) 760-0404~~ ~~Facsimile: (949) 760-9502~~ ~~Christie R.W. Matthaei~~ ~~(Reg. No. 62,933)~~ ~~2crw@knobbe.com~~ ~~Nathan D. Reeves (Reg. No. 77,806)~~ ~~2ndr@knobbe.com~~ ~~Postal and Hand-Delivery Address:-~~ ~~Knobbe, Martens, Olson & Bear, LLP~~ ~~925 4th Ave., Ste. 2500~~ ~~Seattle, WA 98104~~ ~~Telephone: (206) 405-2000~~ ~~Facsimile: (206) 405-2001~~ ~~Daniel Hughes (Reg. No. 76,592)~~ ~~2dph@knobbe.com~~ ~~Postal and Hand-Delivery Address:-~~ ~~Knobbe, Martens, Olson & Bear, LLP~~ ~~3579 Valley Centre Dr., Ste. 300~~ ~~San Diego, CA 92130~~ ~~Telephone: (858) 707-4000~~ ~~Facsimile: (858) 707-4001~~

~~**D. Service Information (37 C.F.R. §42.8(b)(4))**~~

243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-
~~Please direct all correspondence to lead counsel and back-up counsel at the~~
~~addresses shown above. Petitioners also consent to electronic service by email to~~
~~BoxSEAZNL2185LP6@knobbe.com.~~

~~**E. Grounds for Standing (37 C.F.R. §42.104(a))**~~

~~Petitioners certify that the '740 patent is available for IPR and that Petitioners~~
~~are not barred or estopped from requesting IPR on the identified grounds. This pe-~~
~~tition is being filed within one year of service of the original complaint against Peti-~~
~~tioners in the district court litigation.~~

~~**F. Payment of Fees (37 C.F.R. §42.15(a))**~~

~~The Office may charge the §42.15(a) fee to Deposit Account No. 11-1410.~~
~~Review of six claims is requested. Payment for any additional fees due may be~~
~~charged to the above referenced Deposit Account.~~

243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-

~~KNOBBE MARTENS OLSON & BEAR, LLP~~

~~Dated: March 20, 2025~~

~~/Colin B. Heideman/~~

~~Colin B. Heideman (Reg. No. 61,513)~~

~~Joseph R. Re (Reg. No. 31,291)~~

~~Christie R.W. Matthaei (Reg. No. 62,933)~~

~~Nathan D. Reeves (Reg. No. 77,806)~~

~~Daniel Hughes (Reg. No. 76,592)~~

~~Counsel for Petitioners Amazon.com, Inc.,~~

~~Amazon.com Services LLC,~~

~~Amazon Web Services, Inc., and~~

~~Audible, Inc.~~

APPENDIX

243. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-

Listing of Claims from U.S. 8,738,740	
Claim 12	
~~12[pre]~~	~~A non-transitory computer readable storage medium including computer readable code, which when executed by a computer, causes said computer to:~~
~~12[a]~~	~~determine a first position within an audio stream playing on a media player;~~
~~12[b]~~	~~determine a time offset using a point in time of the first position from a beginning of the audio stream;~~
~~12[c]~~	~~create a bookmark for the first position, the bookmark including a file, the file including a unique identifier for identifying the audio stream and including the time offset;~~
~~12[d]~~	~~wherein the bookmark is for positioning the audio stream to the first position using the time offset;~~
~~12[e]~~	~~wherein the audio stream is stored as a plurality of digital audio files in a library, each digital audio file including a different segment of the audio stream, and wherein the computer code is further configured to cause said computer to:~~
~~12[f]~~	~~determine a first digital audio file from the plurality of digital audio files to be loaded for playback with the media player from the first position, the first digital audio file selected using the time offset and a descriptor file, the descriptor file for ordering the plurality of digital audio files and including at least one of a start time, an end time, and a play time of each digital audio file in the plurality of digital audio files within the audio stream;~~
~~12[g]~~	~~determine if the first digital audio file is resident within the computer;~~
~~12[h]~~	~~download the first digital audio file from the library in dependence upon whether the first digital audio file is already resident within the computer; and~~

~~Listing of Claims from U.S. 8,738,740~~	
~~12[i]~~	~~load the first digital audio file for playback with the media player from the first position.~~
~~Claim 13~~	
~~—~~	~~The non-transitory computer readable storage medium according to claim 12, wherein the first position is determined when the media player is stopped while playing the audio stream.~~
~~Claim 14~~	
~~—~~	~~The non-transitory computer readable storage medium according to claim 12, wherein the first position is determined in response to a make bookmark command.~~
~~Claim 15~~	
~~—~~	~~The non-transitory computer readable storage medium according to claim 12, wherein the time offset is determined by subtracting a predetermined value from the point in time of the first position from the beginning of the audio stream.~~
~~Claim 16~~	
~~—~~	~~The non-transitory computer readable storage medium according to claim 12, wherein the computer code is further configured to cause said computer to: transfer the bookmark to another computer.~~
~~Claim 17~~	
~~—~~	~~The non-transitory computer readable storage medium according to claim 16, wherein the other computer is for loading a digital audio file including the first position for playback by an other media player, the media player and the other media player using one of the same audio formats and different audio formats.~~

CERTIFICATE OF COMPLIANCE

Pursuant to ~~37 C.F.R. §42.24(d)~~, the undersigned certifies that this ~~PETITION~~
~~FOR INTER PARTES REVIEW OF U.S. PATENT NO. 8,738,740~~ con-
tains ~~13,873~~ words according to the word processing program used to prepare this paper.
The foregoing word count complies with the ~~14,000~~ word type volume limit specified by
~~37 C.F.R. §42.24(a)(1)~~.

Dated: ~~March 20, 2025~~ By: /Colin B. Heideman/
~~Colin B. Heideman (Reg. No. 61,513) KNOBBE~~
~~MARTENS-OLSON & BEAR, LLP~~

249. Accordingly, for at least the reasons I discuss above, Hanson, Yoshi-

CERTIFICATE OF SERVICE

~~The undersigned hereby certifies that on the date below a copy of this PETITION~~
~~FOR INTER PARTES REVIEW OF U.S. PATENT NO. 8,738,740 and~~
~~ACCOMPANYING EXHIBITS are being served on March 20, 2025, via Federal Express~~
~~overnight mail on counsel of record for U.S. Patent No. 8,738,740 at the Correspondence~~
~~Address of record below:~~

~~Neil Teitelbaum Teitelbaum &
Bouevitch 834 Colonel By
Drive Ottawa, ON K1S 5C4
Canada~~

~~A courtesy copy is also being served via email on counsel for the patent holder in the~~
~~pending district court litigation:~~

~~Daignault Iyer LLP 8229-
Boone Blvd., Suite 450
Vienna, VA 22182
Email : DI-AudioPod@daignaultiyer.com~~

~~Dated: March 20, 2025 By: /Colin B. Heideman/~~

253. Colin B. Heideman (Reg. No. 61,513) KNOBBE MARTENS OLSON &
BEAR, LLPFor the foregoing reasons, it is my opinion that claims 12-17 of the '740
patent would have been obvious to a person of ordinary skill in the art at the time of
the alleged invention in view of the prior art discussed above.

254. I reserve the right to supplement my opinions in the future to address or respond to any issues that the Patent Owner may raise, as well as new information including, but not limited to, any claim constructions advanced by the Patent Owner or adopted by the Board in the Institution Decision, and respond to any alleged secondary considerations as they become available to me.

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I declare that all statements made herein of my own knowledge are true and
that all statements made on information and belief are believed to be true; and further
that these statements were made with the knowledge that willful false statements and
the like so made are punishable by fine or imprisonment, or both, under Section 1001
of Title 18 of the United States Code.

Executed on March 19th, 2025

at Durham, North Carolina.



Professor Ketan Mayer-Patel, Ph.D.