

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NFL ENTERPRISES LLC,
Petitioner,

v.

OPENTV, INC.,
Patent Owner.

Case IPR2018-00463
Patent 7,055,169 B2

Before JAMESON LEE, SALLY C. MEDLEY, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

DECISION
Instituting *Inter Partes* Review
35 C.F.R. § 314(a)

I. INTRODUCTION

NFL Enterprises LLC (“NFL”)¹ filed a Petition for *inter partes* review (Paper 1, “Pet.”) of claims 1, 2, 22, and 23 of U.S. Patent No. 7,055,169 B2 (Ex. 1001, “the ’169 patent”). OpenTV, Inc. (“OpenTV”), the Patent Owner², filed a Preliminary Response (“Prelim. Resp.”) to the Petition. Paper 6.

We have discretion to institute an *inter partes* review when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Applying that standard, we institute *inter partes* review of claims 1, 2, 22, and 23 of the ’169 patent, for the reasons explained below.

The following findings of fact and conclusions of law are not final, and we make them solely to determine that NFL meets the threshold for initiating review. We will base our final decision on the full trial record, including any timely-filed response by OpenTV.

II. BACKGROUND

A. RELATED PROCEEDINGS

The parties identify the following as actions that may affect or be affected by this proceeding (Pet. 1–2; Paper 4 at 2–3):

¹ Petitioner, NFL Enterprises LLC, identifies NFL Ventures, L.P. as a real party-in-interest. Pet. 1.

² Patent Owner, OpenTV, Inc., identifies Nagra USA, Inc. and Kudelski S.A. as real parties-in-interest. Paper 4, 2.

Nagravision SA and OpenTV, Inc. v. NFL Enterprises LLC, No. 2:17-cv-3919-AB-SK (C.D. Cal., filed May 24, 2017).

OpenTV, Inc. v. NFL Enterprises LLC, No. 2:17-cv-00031-JRG-RSP (E.D. Tex., filed Jan. 12, 2017).

Apple Inc. v. OpenTV, Inc., IPR2016-01004 (PTAB, filed May 4, 2016).

Time Warner Cable Inc. v. OpenTV, Inc. et al., No. 3:16-cv-02433 (N.D. Cal., filed May 4, 2016).

Apple Inc. v. OpenTV, Inc., CBM2016-00066 (PTAB, filed May 2, 2016).

Yahoo! Inc. v. Kudelski SA et al., 5:16-cv-00349 (N.D. Cal., filed Jan. 21, 2016).

OpenTV, Inc. et al v. Verizon Communications, Inc. et al., No. 6:15-cv-00951 (E.D. Tex., filed Oct. 30, 2015).

OpenTV, Inc. et al v. Apple Inc., No. 5:15-cv-02008 (N.D. Cal., filed May 5, 2015).

OpenTV, Inc. et al v. Netflix, Inc., No. 3:14-cv-01723 (N.D. Cal., filed Apr. 14, 2014).

OpenTV Inc. v. Netflix Inc., No. 3:14-cv-01525 (N.D. Cal., filed Apr. 2, 2014).

OpenTV Inc. v. Netflix, Inc., No. 1:12-cv-01733 (D. Del., filed Dec. 19, 2012).

U.S. Provisional Application No. 60/373,883 (filed Apr. 19, 2002) (submitted as Ex. 1003).

B. THE '169 PATENT (EX. 1001)

The '169 patent relates to “a system and method for creating and controlling interactive television content.” Ex. 1001 at 1:12–13. Such

interactive content “may incorporate television audio and video, still images, text, interactive graphics and applications, and many other components.” *Id.* at 1:17–20.

To coordinate the presentation of interactive content from various resources, the ’169 patent describes “[a] method and mechanism . . . which enable content authors to use directives, such as HTML, scripting languages, or other languages, with television extensions to create and/or control interactive television content.” *Id.* at 2:33–36. These directives, which may be provided by the content author, can “indicate that a particular subset of resources required for a presentation are deemed prerequisites,” and if so, “the providing of the presentation is withheld until the prerequisite resources are obtained.” *Id.* at 2:39–47.

According to the Specification, the invention contemplates delivery of content resources in a number of ways from the content provider to a receiver device, including a direct point-to-point, such as a telephone line, a network such as the internet, or broadcasting over satellite, cable or terrestrial television. *See id.* at 4:13–27. Figure 3 of the ’169 patent shows an example receiving device:

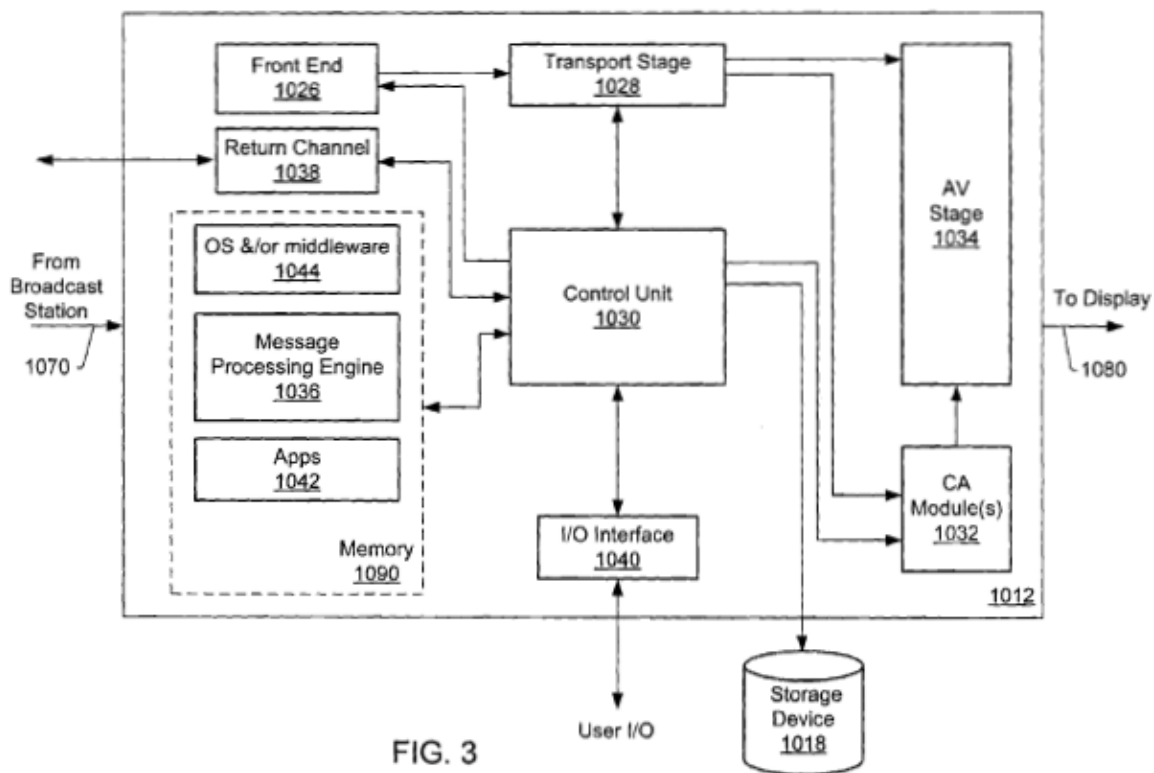


Figure 3 is a block diagram depicting “one embodiment of a receiving/initiating device 1012.” *Id.* at 2:64–65, 5:15–16. An arrow (1070) pointing to receiver 1012 represents broadcast signals. *See id.* at 5:20. At the center of receiver 1012, box 1030 represents a control unit that “may comprise a microprocessor, memory (e.g., RAM) and other components which are necessary to perform ordinary general purpose computing.” *Id.* at 5:33–35. A box representing memory (1090) includes operating system and middleware 1044, messaging processing engine 1036, and applications 1042. *Id.* at 5:27–29; *see also id.* at 5:36–55.

C. CHALLENGED CLAIMS

Independent claim 1 of the '169 patent is as follows:

1. A method comprising:

receiving one or more directives, wherein said directives are indicative of an audio, video and/or graphic presentation which requires a set of resources;
determining whether said one or more directives includes a prerequisite directive which indicates that acquisition of a *subset of said set of resources* is a prerequisite for initiating the presentation;
initiating said presentation, in response to determining the one or more directives do not include said prerequisite directive; and
prohibiting initiation of said presentation until said subset of resources are acquired, in response to determining the one or more directives include said prerequisite directive.

Ex. 1001 at 52:8–22 (emphasis of key phrase added).

Claim 2, which depends from claim 1, recites “wherein said prerequisite directive comprises one or more directives selected from the group consisting of: a markup language, a scripting language, and a style sheet.” *Id.* at 52:23–26.

Independent claim 22 is as follows:

22. A client device *in an interactive television system*, said device comprising:
a *receiver* configured to receive signals corresponding to directives which are indicative of an audio, video and/or graphic presentation requiring a set of resources; and
a *processing unit* coupled to said receiver, wherein said processing unit is configured to:
determine whether said one or more directives includes a prerequisite directive which indicates that acquisition of a *subset of said set of resources* is a prerequisite for initiating the presentation;
initiate said presentation, in response to determining the one or more directives do not include said prerequisite directive; and
prohibit initiation of said presentation until said subset of resources are acquired, in response to determining the

one or more directives include said prerequisite directive.

Id. at 54:4–22 (emphasis of key phrases added).

Independent claim 23 recites “[a] computer readable medium comprising program instructions executable by a computer” essentially to carry out the steps of claim 1. *See id.* at 54:24–39.

D. ASSERTED GROUNDS OF UNPATENTABILITY

NFL challenges the patentability of claims 1, 2, 22, and 23 of the ’169 patent on the following grounds:

References	Basis	Challenged Claims
Beri ³	§ 103(a)	1, 2, 23
Beri and Harrington ⁴	§ 103(a)	22
Armstrong ⁵	§ 103(a)	1, 2, 23
Armstrong and Harrington	§ 103(a)	22

Pet. 4.

NFL supports the Petition with a Declaration of Stephen Melvin, Ph.D., Ex. 1004; *see also* Ex. 1005 (Dr. Melvin’s curriculum vitae).

OpenTV submits a 1996 *PC Magazine* article as evidence supporting the Preliminary Response.⁶

³ Beri et al., US 6,141,018 (issued Oct. 31, 2000) [hereinafter Beri]. Ex. 1006.

⁴ Harrington, US 7,120,871 B1 (issued Oct. 10, 2006) [hereinafter Harrington]. Ex. 1007.

⁵ TOM ARMSTRONG, DESIGNING AND USING ACTIVE X CONTROLS (1997) [hereinafter Armstrong]. Exs. 1008–09.

⁶ Michael J. Miller et al., *Browsers at the Crossroads*, PC MAG., Oct. 22, 1996, at 100. Ex. 2001.

III. ANALYSIS

A. LEVEL OF ORDINARY SKILL IN THE ART

NFL argues that a person with ordinary skill in the relevant art would have “a bachelor’s degree in computer science, computer engineering, or the equivalent, plus approximately two years of experience in the field of computer engineering or software development, or an equivalent amount of relevant work and/or research experience.” Pet. 11 (citing Ex. 1004 ¶ 21). OpenTV agrees that a person with only ordinary skill in the art would not have a graduate level of training and does not, in the Preliminary Response, otherwise dispute NFL’s characterization of the level of ordinary skill. Prelim. Resp. 2. Therefore, for the purpose of this Decision, we adopt NFL’s characterization of the level of ordinary skill in the art.

B. CLAIM CONSTRUCTION

We interpret patent claims using the “broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under that standard, we give claim language “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description” of the patent. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

We need only construe claim terms “that are in controversy, and only to the extent necessary to resolve the controversy.” *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017)

(quoting *Vivid Techs., Inc. v. Am. Sci & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). NFL proposes constructions of four terms, *see* Pet. 13–20, and OpenTV does not dispute these constructions or propose any alternatives. However, based on the information presented in the Petition and the Preliminary Response, our analysis and conclusion would not be different, whether any of NFL’s proposed constructions are adopted. Therefore, we find that none of the terms identified by Petitioner for construction requires express construction for the purpose of this Decision.

C. ASSERTED UNPATENTABILITY OF CLAIMS 1, 2, AND 23 AS
OBVIOUS OVER BERI

In the context of a web browser, Beri describes a “method and system for displaying an arbitrary image in an animated marquee.” Ex. 1006 at 2:40–41. This is similar to a text marquee, which “provides a visual effect that is similar to the electronic marquees found on some buildings that display the headline news.” *Id.* at 2:7–8. However, instead of merely using it to present scrolling text, one may use Beri’s animated marquee to present a scrolling image “of arbitrary complexity. Indeed, the image itself can be a hypertext document.” *Id.* at 3:43–44. This image “is identified by a URL,” as well as “[v]arious parameters,” which “can be set to indicate whether the URL is to be drawn immediately or progressively.” *Id.* at 3:27–28, 45, 48–50. The animated marquee may also consist of “a sequence of images rather than just one image. Each image is identified by a URL.” *Id.* at 3:52–54.

In one embodiment, the animated marquee takes the form of an ActiveX object. *Id.* at 5:14–15. ActiveX, a technology that Microsoft developed in the 1990s, includes an extension to the HTML web markup language, an <object> tag, for embedding computer code in a web page. *See*

id. at 2:10–33. The <object> tag may include named parameters that define properties and behavior of the animated marquee, including the parameter “DrawImmediately,” a “[f]lag indicating to progressively render the image.” *Id.* at 5:57. Beri states that “[i]f the DrawImmediately parameter is set, the image will scroll before the image is fully loaded (i.e., formatted). This gives the effect of progressive rendering.” *Id.* at 6:42–44. In an example of a marquee object under the heading “Slide Image From Bottom Only When Finished Formatting and Rendering,” the <object> tag has a parameter in which DrawImmediately is set to zero. *See id.* at 8:25–30.

NFL addresses each of the limitations of claim 1 and reasonably argues that Beri discloses all of them. Pet. 26–34. In particular, NFL argues that Beri discloses receiving “directives” in the form of <object> tag parameters such as DrawImmediately. *Id.* at 28. According to NFL, these directives “are indicative of an audio, video and/or graphic presentation which requires a set of resources,” as recited in claim 1, because rendering the animated marquee requires loading and rendering a set of resources, referenced by URLs, which may include audio, video, or graphic content. *See id.* at 27. NFL argues that the directives are “indicative” of these resources because the <object> tag parameters “are declarations or instructions that indicate how the computer should handle presentation of the [resource] content that is downloaded over the Internet.” *Id.* at 28. One of the parameters is also named “URL,” and indicates the URL where the image in the marquee may be found, for downloading. *See id.* at 28–29.

NFL reasonably argues that a DrawImmediately parameter is a prerequisite directive “when disabled or set to 0,” because “it prohibits the web browser from displaying the web page until after all of the resources

(the images) in the marquee are downloaded.” *Id.* at 29 (citing Ex. 1006 at 3:48–50, 5:57, 6:42–44, 11:24–26). On the other hand, according to NFL, “[i]f DrawImmediately is enabled, or set to 1, it does not constitute a prerequisite directive, because it causes the web browser to initiate display of the marquee progressively, before it finishes downloading the images from the Internet.” *Id.* at 30.

According to NFL, the resources indicated by a prerequisite directive (i.e., a disabled DrawImmediately parameter) are “a subset of said set of resources” required for the presentation, because the “audio, video and/or graphic presentation” constitutes the web page as a whole, in which the <object> tag resides, and Beri discloses that “web pages contain other resources as well, such as images or text, outside of the ActiveX object marquee.” *Id.* at 32 (citing Ex. 1006 at 1:60–67); *see also* Ex. 1004 ¶ 68 (opining that an ordinarily skilled artisan would have understood Beri to disclose the combination of an animated marquee with other images in a web page). According to Dr. Melvin, the default behavior for most browsers at the time of invention was to display web pages progressively. Ex. 1004 ¶ 68. Thus, according to NFL, the additional resources needed to render the full web page would not be prerequisites for initiating the presentation. Pet. 32. These arguments are reasonable on the present record.⁷

⁷ NFL also proposes an alternative theory of unpatentability that relies on interpreting the term “subset” broadly to include “some or all of the set of resources.” Pet. 31–32; *see also id.* at 15–18. Because NFL is reasonably likely to prevail at trial based on the argument that a web page would contain other (non-prerequisite) resources than those indicated by a single disabled DrawImmediately parameter, we need not address the issue for purposes of this Decision.

NFL's further arguments regarding claims 2 and 23 are also reasonable on this preliminary record. NFL argues that Beri discloses the method recited in claim 2, because the <object> tag and its DrawImmediately parameter (the prerequisite directive, if disabled) are defined within ActiveX as extensions to the HTML markup language. *See id.* at 34. NFL argues that Beri discloses the computer readable medium of claim 23, because the medium includes the limitations of claim 1, and is stored on a computer memory. *See id.* at 37 (citing Ex. 1006 at Fig. 4, 4:65–5:13).

In sum, NFL presents reasonable arguments and supporting evidence that Beri discloses each of the limitations of claims 1, 2, and 23, and OpenTV does not rebut these arguments in the Preliminary Response. The information NFL has presented shows that there is a reasonable likelihood that NFL would prevail in showing that claims 1, 2, and 23 are unpatentable under 35 USC § 103(a) over Beri.⁸

D. ASSERTED UNPATENTABILITY OF CLAIMS 1, 2, AND 23 AS OBVIOUS OVER ARMSTRONG

Armstrong is a textbook for software developers, covering the topic of ActiveX controls. Ex. 1008 at xxi. One part of the book describes

⁸ NFL's arguments and evidence are directed to showing that Beri (and Armstrong, *see infra*) includes a complete disclosure of all the limitations in claims 1, 2, and 23. While such a showing, if supported by persuasive evidence on the full trial record, may establish anticipation under 35 U.S.C. § 102, "evidence establishing lack of all novelty in the claimed invention necessarily evidences obviousness." *In re Fracalossi*, 681 F.2d 792, 794 (CCPA 1982). Moreover, there is no evidence on the present record regarding objective indicia of nonobviousness.

embedding ActiveX controls in web pages using an OBJECT element in the extended HTML markup language. *Id.* at 552. It describes the use of PARAM elements within the OBJECT element “to store property values of the embedded object.” *Id.* at 553.

Armstrong teaches that in many cases, property data values for an embedded object are small (such as “a font, a color, or a small string”) and may be embedded directly within the web page. *Id.* However, if a property value is very large, “such as a 2-MB GIF or BMP image,” a problem arises that “a control’s properties are loaded synchronously”; thus, “the browser would be virtually locked while the 2MB+ HTML page was downloaded.” *Id.* at 553–54. Moreover, if the property data is “streaming video or audio, the data is real-time and can be supplied only after instantiation by the container,” and “must be processed asynchronously or it will never work.” *Id.* at 554.

Consequently, Armstrong discloses that the ActiveX architecture provides support for such large property values through a “data path property.” *Id.* A data path property “is a simple [string] that contains a *link* (such as a URL) to the property data. Instead of embedding the data for the property within the HTML document, you store a link to the data.” *Id.* Armstrong notes that data path properties “enable progressive rendering of images. Asynchronous downloading allows the container to load and instantiate several controls at the same time.” *Id.* at 555.

NFL addresses each of the limitations of claim 1 and reasonably argues that Armstrong discloses all of them. Pet. 41–45. In particular, NFL argues that the recited “directives” include the ActiveX PARAM elements enclosed within OBJECT elements of an ActiveX-compatible web

document. *See id.* at 42. According to NFL, Armstrong discloses that these directives are “indicative” of an audio, video, or graphic presentation, because the directives indicate “how the computer should handle presentation of the audio, video, or graphic content.” *Id.* The “resources,” according to NFL, include “fonts, colors, text strings, images, videos, and audio.” *Id.* at 41. NFL argues that the resources may be either “embedded properties (*i.e.*, small strings of text or small images)” or data path properties (*i.e.*, large GIF or BMP images or videos).” *Id.* at 41–42 (citing Ex. 1009 at 551, 553–54).

NFL reasonably argues that a PARAM element containing an embedded property is a prerequisite directive, because “presentation of the web page will be *prohibited until the subset of resources are acquired.*” *Id.* at 45. For example, “if an OBJECT element has an embedded image, then the presentation will be prohibited until the OBJECT element is loaded.” *Id.* (citing Ex. 1009 at 553–55). By contrast, NFL argues that “if the web page does not include a prerequisite directive, meaning that none of the OBJECT elements have embedded resources, and, therefore, all resources are indicated by data path properties, then the web browser will determine no prerequisite directive exists and presentation of the web page will be *initiated.*” *Id.* at 44–45 (citing Ex. 1009 at 553–55, 567–68).

According to NFL, the resources indicated by a prerequisite directive (*i.e.*, the embedded properties) are “a subset of said set of resources” required for the presentation, because Armstrong teaches that the full set of resources for a given web presentation may include both embedded properties and data path properties. *Id.* at 43–44. This argument is reasonable on this record.

NFL's further arguments regarding claims 2 and 23 are likewise reasonable on this preliminary record. NFL argues that Armstrong discloses the method recited in claim 2, because a prerequisite directive (an embedded property in a PARAM element) is written in the HTML markup language. *See id.* at 46. NFL argues that Armstrong discloses the computer readable medium of claim 23, because the medium includes the limitations of claim 1, and is stored on a computer memory. *See id.* at 49 (citing Ex. 1008 at 22).

In sum, NFL presents reasonable arguments and supporting evidence that Armstrong discloses each of the limitations of claims 1, 2, and 23, and OpenTV does not rebut these arguments in the Preliminary Response. The information NFL has presented shows that there is a reasonable likelihood that NFL would prevail in showing that claims 1, 2, and 23 are unpatentable under 35 USC § 103(a) over Armstrong.⁹

E. ASSERTED UNPATENTABILITY OF CLAIM 22 AS OBVIOUS OVER
BERI OR ARMSTRONG IN VIEW OF HARRINGTON

Harrington describes a system that “combines broadcast television programming . . . with the massive Internet.” Ex. 1007 at 1:65–2:3. The system involves constructing a web page in a staging area, and then displaying the web page on a screen in synchronization with a video program “based upon timer event information or receipt of a particular command instructing that it be displayed.” *Id.* at abstract.

To retrieve and construct web pages, the system uses “a JAVA enabled browser,” which “is platform independent, and thus, enables efficient and flexible transfer of programs, images, etc., over the Internet.” *Id.* at 7:52–56.

⁹ *See supra* note 8.

The browser is combined with “specialized interface software” that “acts as an interface between the video programming and the Internet functions” of the disclosed system. *Id.* at 7:56–59. Thus, according to the disclosure, “video programming and corresponding Internet pages can be viewed on personal computers equipped with a television card, but the open software-based approach enables anyone with a television set and JAVA enabled PC to experience the system of the invention.” *Id.* at 2:50–54.

NFL argues that Harrington discloses “a client device in an interactive television system” as recited in the preamble of claim 22, which could consist of “a personal computer equipped with a television card” that receives video from broadcast television programming. Pet. 34 (citing Ex. 1007 at 1:65–66, 250–54); *accord id.* at 46. According to NFL, Harrington also discloses the recited “receiver,” comprising a television card or internet connection, as well as the recited “processing unit,” comprising a microprocessor or PC containing a browser. *Id.* at 36 (citing Ex. 1007 at 2:50–54, 5:45–64); *accord id.* at 48–49.

NFL argues that the combination of Harrington’s “receiver” and “processing unit” with Beri’s rendering software “would have been an obvious combination of known elements that would have yielded predictable results.” *Id.* at 35 (citing Ex. 1004 ¶ 76). In particular, NFL argues that a person of ordinary skill in the art would have been motivated to render marquee animations, using Harrington’s hardware, while the user was watching television. *Id.* (citing Ex. 1004 ¶ 76).

Similarly, NFL argues that the combination of Harrington’s “receiver” and “processing unit” with Armstrong’s asynchronous web page rendering software “would have been an obvious combination of known limitations

that would have yielded predictable results in rendering web pages within the context of integrated television.” *Id.* at 47 (citing Ex. 1004 ¶ 98). In particular, NFL argues that a person of ordinary skill in the art would have been motivated to render web page resources asynchronously, using Harrington’s hardware, while the user was watching television. *Id.* (citing Ex. 1004 ¶ 98).

OpenTV argues that the Petition fails to disclose how a person of ordinary skill in the art would have combined Harrington with either Beri or Armstrong, given Harrington’s technical incompatibility with the two primary references. *See* Prelim. Resp. 1. According to OpenTV, Beri and Armstrong rely on ActiveX technology, which is tied to Microsoft’s Internet Explorer browser, whereas Harrington’s system uses Netscape Navigator. *Id.* at 2–3 (citing Pet. 35, 47). However, OpenTV argues that Microsoft and Netscape were fierce competitors at the time of invention, and Microsoft’s proprietary ActiveX technology was incompatible with Netscape Navigator. *See id.* at 4 (citing Ex. 2001 at 101–03, 108). Thus, according to OpenTV, combining the functionality of Beri or Armstrong with Harrington would not have been a straightforward combination. *See id.* at 5 (citing Ex. 2001 at 102–03). Moreover, OpenTV argues that NFL fails to clearly articulate or provide evidence showing how this combination would have worked, or how a skilled artisan (without any graduate level training) would have made the combination. *See id.* at 2, 5.

On this preliminary record, NFL has articulated a reasonable rationale, with credible evidentiary support, that a person of ordinary skill in the art would have, based on the combined teachings of Harrington and either Beri or Armstrong, arrived at the device recited in claim 22. *See KSR Int’l Co. v.*

Teleflex Inc., 550 U.S. 398, 416 (2007) (“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”). OpenTV’s arguments do not successfully discredit NFL’s arguments. “The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). NFL’s rationale does not rely on bodily integrating ActiveX technology into Netscape Navigator, or vice versa. Rather, NFL relies on running Beri’s or Armstrong’s web rendering software in a hardware environment containing the interactive television features that Harrington teaches. *See* Pet. 35, 47.

OpenTV does not, on this record, point to any evidence that a person of ordinary skill in the art would be unable to predictably run Internet Explorer and the ActiveX-based web rendering systems of either Beri or Armstrong in the hardware environment as described by Harrington. Harrington teaches the use of a general purpose PC and a “JAVA enabled browser” for retrieving and rendering web pages. *See* Ex. 1007 at 2:50–54, 7:46–56. Harrington does disclose embodiments in which this browser is Netscape Navigator. *See id.*, Figs. 3, 7, 8. However, OpenTV does not point to any teaching in Harrington that would teach away from the use of other JAVA enabled browsers such as Internet Explorer. *See* Ex. 2001 at 102 (“JAVA AND PLUG-INS remain the accepted standards for extending browser functionality. Both [Internet Explorer and Netscape Navigator] support them”). We find that one with ordinary skill in the art would

have known to use a compatible browser and would not have insisted on using components that are incompatible with each other.

For the above reasons, the information on this record shows that there is a reasonable likelihood that NFL would prevail in showing that claim 22 is unpatentable under 35 USC § 103(a) over either Beri in view of Harrington or Armstrong in view of Harrington.

F. CONCLUSION

On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on less than all the claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018). After considering the evidence and arguments presented in the Petition and Preliminary Response, we determine that NFL has demonstrated a reasonable likelihood of success in proving that claims 1, 2, 22, and 23 of the '169 patent are unpatentable. Therefore, we institute an *inter partes* review as set forth in the Order below.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1, 2, 22, and 23 of the '169 patent is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, *inter partes* review of the '169 patent commences on the entry date of this Order, and notice is hereby given of the institution of a trial.

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