

IPR2025-01184
Patent No. 7,055,169

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PINTEREST, INC.
Petitioner,
v.

OPENTV, INC.
Patent Owner.

Case IPR2025-01184
U.S. Patent No. 7,055,169

PATENT OWNER'S PRELIMINARY RESPONSE

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PATENT OWNER'S EXHIBIT LIST

Ex.2001	Complaint for Patent Infringement, <i>OpenTV, Inc. v. Pinterest, Inc.</i> Civil Action No. 1:24-cv-01301-JCG , Dkt. 1 (Nov. 27, 2024)
Ex. 2002	Amended Complaint for Patent Infringement, <i>OpenTV, Inc. v. Pinterest, Inc.</i> Civil Action No. 1:24-cv-01301-JCG , Dkt. 16 (Feb. 18, 2025)
Ex. 2003	Answer to Amended Complaint for Patent Infringement, <i>OpenTV, Inc. v. Pinterest, Inc.</i> Civil Action No. 1:24-cv-01301-JCG , Dkt. 37 (Aug. 6, 2025)
Ex. 2004	[Proposed] Scheduling Order, <i>OpenTV, Inc. v. Pinterest, Inc.</i> Civil Action No. 1:24-cv-01301-JCG , Dkt. 51 (Sept. 18, 2025)
Ex. 2005	Complaint, <i>OpenTV, Inc. v. Netflix Inc.</i> , Case No. 1:12-cv-01733-GMS, Dkt. 1 (D.Del. 2012)
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Ex. 2007	Complaint, <i>OpenTV, Inc. v. Apple Inc.</i> , Case No. 15-CV-02008-EJD (NC), Dkt. 1 (N.D. Cal. 2015)
Ex. 2008	Complaint, <i>OpenTV, Inc. et al v. Verizon Communications Inc. et al</i> , Case No. 6:15-cv-00951-JRG-KNM, Dkt. 1 (E.D.Tex. 2015)
Ex. 2009	Complaint, <i>Yahoo! Inc. v. Kudelski SA et al</i> , Case No. 5:16-cv-00349-NC, Dkt. 1 (N.D. Cal. 2016)
Ex. 2010	Complaint, <i>OpenTV, Inc. v. NFL Enterprises, LLC</i> , Case No. 2:17-cv-00031-JRG-RSP. Dkt 1 (E.D. Tex. 2017)
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Ex. 2014	Press Release, THE KUDELSKI GROUP AND VERIZON ENTER INTO PATENT CROSS LICENSE AGREEMENT AND RESOLVE ALL PENDING LITIGATION
Ex. 2015	Press Release, 2014 ANNUAL RESULTS
Ex. 2016	Press Release, KUDELSKI GROUP AND YAHOO SETTLE PATENT LITIGATION
Ex. 2017	Pinterest-Kudelski IP Discussion 2023-03-15
Ex. 2018	Kudelski Letter - 7.24.24
Ex. 2019	May 6, 2021 Email from A.Waxler, VP of IP Licensing, NAGRA, regarding Kudelski Presentation to Pinterest 5.5.2021 v1.1
Ex. 2020	Kudelski Presentation to Pinterest 5.5.2021 v1.1
Ex. 2021	Declaration of Dr. Stephen Melvin, IPR2018-00463, Ex. 1004
Ex. 2022	U.S. Pat. No. 6,188,401 (“Peyer”)
Ex. 2023	US Pat. App. No. 2002/0194219 A1 (“Bradley”)
Ex. 2024	2025.08.18 Tennant Ltr to Counsel re <i>OpenTV v. Pinterest</i>
Ex. 2025	Docket Print-Out (ECF), <i>OpenTV, Inc. v. Pinterest, Inc.</i> Civil Action No. 1:24-cv-01301-JCG

I. PRELIMINARY STATEMENT

The Petition fails to establish a reasonable likelihood that Pinterest, Inc. (“Pinterest” or “Petitioner”) will prevail on any of its challenges to claims 1, 2, 3, 11, 12, 22, and 23 (collectively the “Challenged Claims”) based on U.S. Patent No. 6,141,018 (EX1006) (“*Beri*”) (alone or in combination with any other reference) or Tom Armstrong, *Designing and Using ActiveX Controls* (EX1008 & 1009) (“*Armstrong*”) (along or in combination with any other reference). The Board should deny all of these challenges because the Petition fails to establish a reasonable likelihood that Pinterest will prevail on any of them. 35 U.S.C. § 314(a).

For all of the Challenged Claims, Pinterest fails to show how *Beri* or *Armstrong* teach or suggest a “prerequisite directive” that meets all of the claimed requirements for the “prerequisite directive”. Pinterest fails to illustrate the requirements that any alleged “prerequisite directive” in *Beri* or *Armstrong* either (1) indicates that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation, or (2) prohibits initiation of said presentation until said subset of resources are acquired.

This is fatal to all grounds asserted, and is cause for the Board to deny institution of the Petition in its entirety.

II. THE '169 PATENT

The '169 patent, entitled “Supporting common interactive television functionality through presentation engine syntax,” was duly and legally issued on May 30, 2006, from a patent application filed on April 21, 2003, with Alain Delpuch, James Whitley, Jean-Rene Menand, Emmanuel Barbier, Kevin Hausman, Debra Hensgen, and Dongmin Su as named inventors. EX1001. The '169 patent claims priority to provisional application No. 60/373,883, filed on April 19, 2002. *Id.*

A. The '169 Patent Created a Television-like Experience Over the Internet by Using Directives and Prerequisite Directives.

The '169 patent “enable[s] content authors to use directives, such as HTML, scripting languages, or other languages, with television extensions to create and/or control interactive television content.” EX1001 at 2:33-35. The patent describes how pieces of information, or data objects, may be intended to be combined in a single object data stream to form a program. This program may also contain streaming data such as audio or video. *Id.* at 2:1-15. The patent is directed to fulfilling a need for a “more flexible scheme” for addressing technical problems related to access of ever-wider range of data and resources, especially on networks that define different or even proprietary signaling formats. *Id.* at 2:16-29.

To solve this problem, the '169 patent describes a method and mechanism which “enable[s] content authors to use directives, such as HTML, scripting

languages, or other languages[.]” *Id.* at 2:33-38. The patent further describes how “[i]n one embodiment, the directives are received by a centrally located proxy server which may be configured to receive, transcode and convey transcoded web based content to client devices.” *Id.* at 2:48-52.

The ’169 patent further provides content creators the ability to “label the essential subset of resources by identifying them using a directive such as a ‘prerequisite’ meta-data header.” EX1001 at 21:9-20. For example, the ’169 patent describes how the use of a prerequisite directive could prevent rendering of a page until an image (*e.g.*, “background.mpg”) is acquired:

**<META name=“prerequisite”
content=“http://www.cnn.com/background.mpg”>.**

Id. In this example, the presentation is prohibited until the particular subset of resources (“background.mpg”) identified by the prerequisite directive¹ (META name=“prerequisite”) was acquired. These “directives” enable efficient and reliable display of content by identifying (in advance) the specific presentation resources that the system will need to play the content. *See* EX1001 at Abstract, 2:40-47.

¹ To the extent necessary, OpenTV’s position is that the ordinary and customary meaning of the term “prerequisite directive”, as derived from the specification, is “a directive for specifying that a particular subset of resources required for a presentation needs to be obtained prior to the presentation being initiated.” *See* EX1001 at Abstract, 2:40-47.

Prerequisite directives are distinct from the more general class of directives because prerequisite directives specify certain resources that must be obtained prior to initiating the presentation. EX1001 at 2:43-47 (“Included among these directives are one or more directives which indicate that a particular subset of resources required for the presentation are deemed prerequisites. In response to detecting these directives, the providing of the presentation is withheld until the prerequisite resources are obtained.”). Figure 5 of the ’169 patent illustrates the use of prerequisite directives:

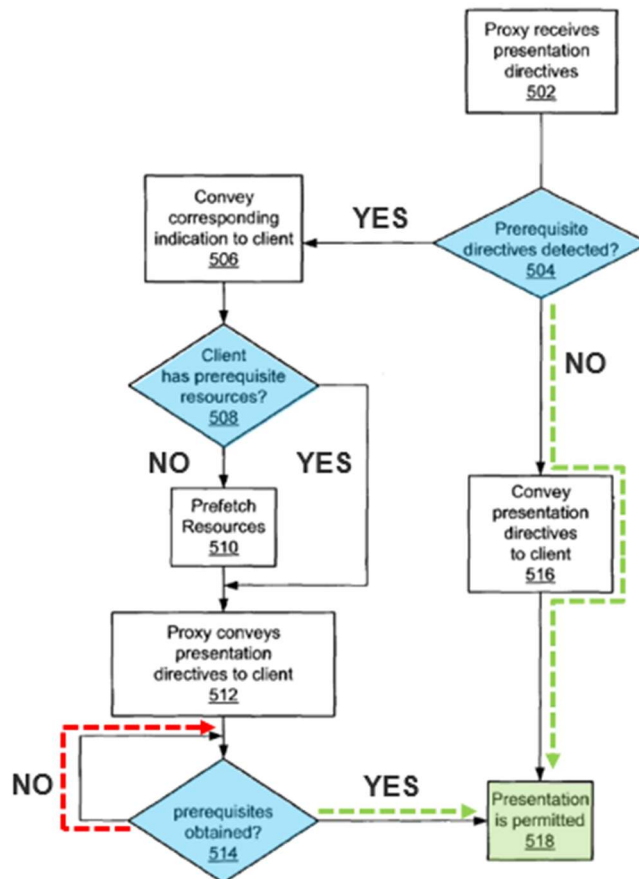


FIG. 5

Id., Fig. 5 (annotated). As the annotated Figure 5 describes, the prerequisite directives prohibit the presentation until certain prerequisite resources are obtained. These inventive aspects are captured in each of the Challenged Claims 1, 22, and 23 (collectively the “Independent Claims”). Each of the Independent Claims requires, *inter alia*, (1) determining whether a received one more directives includes a prerequisite directive which indicates that acquisition of a subset of resources is a prerequisite for a presentation or initiating of a presentation; and (2) prohibiting initiation of the presentation until the subset of resources is acquired:

<u>Claim 1</u>	<u>Claim Language:</u>
[Pre.]	A method comprising:
[A]	receiving one or more directives, wherein said directives are indicative of an audio, video and/or graphic presentation which requires a set of resources;
[B]	determining whether said one or more directives includes a prerequisite directive which indicates that acciuisition [sic] of a subset of said set of resources is a prerequisite for initiating the presentation;
[C]	initiating said presentation, in response to determining the one or more directives do not include said prerequisite directive; and

[D]	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.
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<u>Claim 22</u>	<u>Claim Language:</u>
[Pre.]	A client device in an interactive television system, said device comprising:
[A]	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
[B]	a processing unit coupled to said receiver, wherein said processing unit is configured to:
[C]	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;
[D]	initiate said presentation, in response to determining the one or more directives do not include said prerequisite directive; and

[E]	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.
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<u>Claim 23</u>	<u>Claim Language:</u>
[Pre]	A computer readable medium comprising program instructions executable by a computer to:
[A]	receive directives which are indicative of an audio, video and/or graphic presentation which requires a set of resources;
[B]	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 the presentation;
[C]	initiate said presentation, in response to determining the one or more directives do not include said prerequisite directive; and
[D]	prohibit the presenting of said presentation until said subset of resources are acquired, in response to determining the one or more directives include said prerequisite directive.

Because these limitations are present in the challenged Independent Claims, they are present in all of the Challenged Claims. And as further explained below, the

Petition should be denied because neither *Beri* nor *Armstrong* disclose a prerequisite directive that (1) indicates that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation, or (2) prohibits initiation of said presentation until said subset of resources are acquired.

B. The Prior IPR Institution Decision of the '169 Patent Is Not Binding and Should Be Afforded No Weight.

As acknowledged in the Petition, the Board previously instituted IPR on the '169 patent. *See* EX1013. The Board should give little weight to this fact and its prior decision in deciding the Petition at issue here.

First, the Board's prior institution decision is not binding. *See Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1068-69 (Fed. Cir. 2016) ("The Board is free to change its view of the merits after further development of the record, and *should do so* if convinced its initial inclinations were wrong.") The Board never issued a final written decision in the prior proceedings; as a result there are no binding findings from the prior institution decision. *See NFL Enterprises LLC v. OpenTV, Inc.*, IPR2018-00463, Paper No. 14 (PTAB July 13, 2018) (Termination Due to Settlement 35 U.S.C. § 317 and 37 C.F.R. § 42.72).

Second, in the prior IPR proceedings, OpenTV opted to only challenge institution on claim 22, and only on very narrow grounds. *See generally NFL Enterprises LLC v. OpenTV, Inc.*, IPR2018-00463, Paper No. 6 (PTAB Apr. 18,

2018) (Patent Owner’s Preliminary Response). Here, OpenTV raises arguments never addressed by the Board—that *Beri* and *Armstrong* do not disclose the claimed “prerequisite directive” found in all Challenged Claims.

Finally, the Board in its prior institution decision adopted the “broadest reasonable construction” standard applicable to non-expired patents at the time. *See* IPR2018-00463, Paper No. 8 at 8-9. Any interpretation of claims related to the expired ’169 patent would now be under the *Philips* standard. *See* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 55 Fed. Reg. 51340 (<https://www.federalregister.gov/documents/2018/10/11/2018-22006/changes-to-the-claim-construction-standard-for-interpreting-claims-in-trial-proceedings-before-the>).

Thus, the Board should accord no weight to the findings in its prior institution decision.

III. LEGAL STANDARDS

The Board may not institute an *inter partes* review unless the Petition demonstrates a reasonable likelihood that the petition would prevail with respect to at least one of the claims challenged in the petition. 35 U.S.C. § 314(a). “[T]he burden of persuasion is on the petitioner to prove ‘unpatentability by a preponderance of the evidence.’ 35 U.S.C. § 316(e). That burden never shifts to the

patentee.” *FanDuel, Inc. v. Interactive Games LLC*, 966 F.3d 1334, 1341 (Fed. Cir. 2020). “[M]ere conclusory statements” by Petitioner will not meet that burden. *Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016); *see also Univ. of Strathclyde v. Clear-Vu Lighting LLC*, 17 F.4th 155, 160 (Fed. Cir. 2021). In addition, expert testimony may not be used to supply a missing claim limitation. *See* 37 C.F.R. § 42.104(b)(4); July 31, 2025 Stewart Memorandum, Enforcement and Non-Waiver of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in *Inter Partes* Reviews.

IV. PERSON OF ORDINARY SKILL IN THE ART

For the purposes of Patent Owner’s Preliminary Response only, Patent Owner does not contest Petitioner’s proposed level of ordinary skill in the art. Patent Owner does not waive, however, any argument regarding the proper level of skill, and further reserves the right to later advance additional arguments.

V. CLAIM CONSTRUCTION

No claim terms require express construction to determine that the Petition does not establish a reasonable likelihood of unpatentability of any claim and, thus, deny institution. For purposes of this Preliminary Response, Patent Owner contends that the claims should be given their ordinary and customary meaning in light of the specification and prosecution history, as understood by a person of ordinary skill in the art. 37 C.F.R. § 100(b); *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005).

Patent Owner reserves the right to propose constructions at a later date, should such construction become necessary.

**VI. THE PETITIONER FAILS TO ESTABLISH A REASONABLE
LIKELIHOOD THAT THE CHALLENGED CLAIMS ARE
OBVIOUS.**

Pinterest raises eight grounds in its Petition that are premised on *Beri* or *Armstrong*, with a variety of secondary art. These grounds are summarized as follows:

<u>Ground:</u>	<u>Claim(s):</u>	<u>Statutory Basis:</u>	<u>Prior Art:</u>
1	1, 2, 22, 23	§ 103	<i>Beri</i>
2	3, 22	§ 103	<i>Beri</i> in view of <i>Harrington</i>
3	11	§ 103	<i>Beri</i> in view of <i>Kunze</i>
4	12	§ 103	<i>Beri</i> in view of <i>Del Sesto</i>
5	1, 2, 23	§ 103	<i>Armstrong</i>
6	3, 22	§ 103	<i>Armstrong</i> in view of <i>Harrington</i>
7	11	§ 103	<i>Armstrong</i> in view of <i>Kunze</i>
8	12	§ 103	<i>Armstrong</i> in view of <i>Del Sesto</i>

As discussed above, the challenged Independent Claims (*e.g.*, 1, 22, and 23) all require a “prerequisite directive” as claimed, thus the challenged dependent claims (*i.e.*, 2, 3, 11, and 12) do as well. Petitioner relies on *Beri* (alone) to teach the

“prerequisite directive” element in Grounds 1-4. Petitioner relies on *Armstrong* (alone) to teach the “prerequisite directive” element in Grounds 5-8.

The Petition must fail as Petitioner has failed to show that either *Beri* (alone) or *Armstrong* (alone) disclose the “prerequisite directive” as claimed. Instead, what Petitioner relies on for *Beri* and *Armstrong* are rendering attributes and not conditions dynamically checked before a presentation.

A. The Petition Does Not Establish a Reasonably Likelihood that *Beri*, Alone or in Combination with Any Other Reference, Discloses All Elements of the Challenged Claims.

1. Overview of *Beri*

Beri (EX1006) is a U.S. patent entitled “method and system for displaying hypertext documents with visual effects,” and explains how “Microsoft Corporation has defined various extension[s] to HTML. One such extension is known as a <marquee> tag. The <marquee> tag indicates that certain text is to be scrolled within a marquee window on a Web page.” EX1006 at 2:1-4. *Beri* discloses that the marquee tag provides a visual effect similar to the electronic marquees found on some buildings that display the headline news. To extend the marquee’s capability, *Beri* discloses using an ActiveX object to control the drawing of the images in the animation. EX1006 at 5:13-16 (“[T]he animated marquee is implemented as an ActiveX object (i.e., a marquee object) that is identified by an <object> tag in an HTML document.”) The marquee object has various attributes whose values are

applied to the <object> tag. The <object> tag then applies the values set by these attributes to the images within the <object>. EX1006 at 5:16-18 (“The marquee object has various attributes whose values can be specified by the parameters of the <object> tag.”); *id.* at 5:34-36 (“The marquee object then applies the animation to the image and displays the animated image in the marquee window.”) One such attribute is “DrawImmediately,” which when set tells all the images within the marquee object to progressively render. EX1006 6:41-43 (“If 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.”). Thus, Petitioner’s contention is essentially that the *absence* of the DrawImmediately flag is the claimed prerequisite directive. *See* Pet. at 22 (“When set to disabled or set to 0, DrawImmediately is a prerequisite directive which indicates that acciuisition [sic] of a subset of said set of resources is a prerequisite for initiating the presentation.”)

2. *Beri* Fails to Render the Independent Claims Obvious Because It Does Not Teach or Suggest a Prerequisite Directive as Claimed.

Beri fails to teach, suggest, or render obvious a “prerequisite directive” that either (1) indicates that acquisition of a subset of said set of resources² is a

² Petitioner claims that “A POSITA would understand that the term ‘resource’ means any external file, object, script, image, or content that a web page pulls and utilizes.” *See* Pet. at 25; *see also* EX1004 ¶ 81. Patent Owner disputes this narrow definition

prerequisite for initiating the presentation, *see* Claims 1[b], 22[c], 23[b], and/or (2) prohibits initiation of said presentation until said subset of resources are acquired. *See* Claims 1[d], 22[e], 23[d].

Petitioner is unclear on what they contend the claimed “presentation” is. In some places, Petitioner identifies the “animated image” or “animated marquee” as the claimed presentation. Pet. at 19 (“Beri also discloses **an audio, video, and/or graphic presentation** in the form of an “animated image” or “animated marquee” (emphasis in original)). In other portions, the Petitioner appears to contend that the web page with the embedded marquee is the presentation. *Id.* at 21 (“Alternatively, the web page is also **an audio, video, and/or graphic presentation**, because it includes “animated image” or “animated marquee.” (emphasis in original)). In either case, the Petition identifies “DrawImmediately” as the prerequisite directive required for each of the Challenged Claims. Pet. at 22 (regarding Claim 1), 32 (regarding Claim 22), 33-34 (regarding Claim 23). The Petition argues that “DrawImmediately” is a prerequisite directive because “when set to disabled or set to 0” DrawImmediately “prohibits the web browser from displaying the web page until after all of the resources (the one or more images) in the marquee are

of the term “resources.” Nevertheless, the distinction is immaterial for the present response, as Petitioner’s arguments fail even under its own definition. Patent Owner reserves all rights to rebut this definition at a later date.

downloaded.” Pet. at 22. In other words, Petitioner appears to contend that disabling the “DrawImmediately” attribute either prohibits the marquee (i.e., first presentation theory) from animating or prohibits the web page with the embedded marquee (i.e., second presentation theory) from fully displaying because all but the animated marquee will display.

However, a disabled “DrawImmediately” attribute fails to be a “prerequisite directive” at least because: (1) it does not indicate acquisition of a subset of said resources is a prerequisite for initiating the presentation, and (2) it does not prohibit initiation of said presentation until said subset of resources are acquired, which are required elements for each of the Challenged Claims. Instead, “DrawImmediately” is a rendering attribute and not a precondition to presentation based on acquiring a subset of resources.

a. *Beri* fails to teach a prerequisite directive because “DrawImmediately” does not “indicate[] that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation.”

Beri fails to teach a prerequisite directive because “DrawImmediately” does not “indicate[] that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation,” which is a required element for each of the Independent Claims.

As a threshold matter, Petitioner does not seek a construction of “subset.” Pet. at 12. However, the ordinary and customary meaning of the term, as derived from the specification, mandates an understanding of the term to be: **a set that is some, but not all, of the larger set of resources.** EX1001 at 2:43-46 (“[i]ncluded among the directives are one or more directives which indicate that a particular subset of resources required for the presentation are deemed prerequisites,”) (emphasis added); *id.* at 21:13-17 (“one embodiment, a content creator may label the essential subset of resources by identifying them using a directive such as a ‘prerequisite’ meta-data header,”) (emphasis added); *id.* at 21:9-20 (“when rendering graphics . . . it sometimes makes sense to delay displaying to the viewer until at least a subset of the resources, which have been deemed as essential by the content creator, have been downloaded.”) (emphasis added).

Under Petitioner’s first presentation theory (i.e., presentation = marquee), “DrawImmediately” cannot “indicate[] that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation,” because “DrawImmediately” applies to all, but not some, of the set of resources of the marquee. *See* Pet. at 22 (“**DrawImmediately** prohibits the web browser from displaying the web page until after all of the **resources** (the one or more images) in the marquee are downloaded.”) (bold in original). For instance, *Beri*’s “DrawImmediately” is an attribute of the <object> tag, specified once per <object>,

and thus applies to all of the images pointed to by the URL attribute. A user cannot set “DrawImmediately” for individual images within the marquee because it is an ActiveX <object> attribute, not an attribute of the URLs, which specifies the locations of the images. EX1006 at 8:30. The Petitioner concedes this point. Pet. at 22 (“**DrawImmediately** [(when disabled or set to 0)] prohibits the web browser from displaying the web page until after all of the **resources** (the one or more images) in the marquee are downloaded.”). Thus, *Beri*’s “DrawImmediately” tag (when disabled or set to 0) does not indicate that a particular subset of resources required for the presentation are deemed essential, rather it forces the user to wait until “all of the resources” of the marquee are downloaded. *Id.* Consequently, *Beri*’s disclosure teaches away from the teachings of the ’169 patent, which recognized that resources needed for the presentation, but which are not prerequisites, can be acquired after the presentation has begun. *See, e.g.*, EX1001 at 10:40-55. By delaying presentation until the deemed essential resources are acquired, it improved the overall viewing experience. *See, e.g., id.* at 47:38-46. Under *Beri*, the delay in waiting for “all of the resources” to be downloaded rather than an identified particular subset of the set of resources would ruin and degrade the viewing experience and teaches away from the solution disclosed by the ’169 patent.

Under Petitioner’s second presentation theory (i.e., presentation = web page), “DrawImmediately” cannot “indicate[] that acquisition of a subset of said set of

resources is a prerequisite for initiating the presentation,” because “DrawImmediately” applies only to the display of the ActiveX marquee, not the web page as a whole. In other words, disabling the “DrawImmediately” attribute of an embedded ActiveX marquee would not prohibit initiation of rendering the remaining portions of the web page while the resources for the ActiveX marquee are acquired. See EX1006 at 1:49-2:27; *see also id.* at 6:40-45.

Because “DrawImmediately” does not apply to “a set that is some, but not all, of the larger set of resources,” of the ActiveX marquee, it fails to meet the requirements of a “prerequisite directive” with respect to Petitioner’s first “presentation theory.” And Because *Beri*’s “DrawImmediately” is not a prerequisite directive capable of “indicat[ing] that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation” of the web page as a whole, it fails to meet the requirements of a “prerequisite directive” with respect to Petitioner’s second “presentation theory.” Therefore, *Beri* fails to render the Independent Claims obvious.

b. *Beri* also fails to teach a prerequisite directive because “DrawImmediately” does not “prohibit initiation of said presentation until said subset of resources are acquired.”

As an initial matter, the Petition can be denied because *Beri* fails to teach “prohibit initiation of said presentation until said subset of resources are acquired”

and Petitioner impermissibly relies on expert testimony to fill this missing disclosure. PTAB Consolidated Trial Practice Guide (2019) at 36 (Expert testimony “is not a substitute for disclosure in a prior art reference itself.”); *see also Unified Pats. Inc. v. Velos Media, LLC*, IPR2019-00883, Paper 16 at 15 (PTAB Nov. 15, 2019) (“We, therefore, agree with Velos that expert testimony regarding the restricted placement limitation cannot take the place of disclosure from patents or printed publications.”); *Google LLC v. Videoshare LLC*, IPR2020-01631, Paper 14 at 16 (PTAB Apr. 7, 2021) (“expert testimony may explain ‘patents and printed publications,’ but is not a substitute for disclosure in a prior art reference itself.”). Specifically, Petitioner argues that “Beri teaches the prohibition of initiation of said presentation because the animation would otherwise initiate in the web browser without the ActiveX control” and cites only to paragraph 90 of the declaration of Dr. Freedman. *See* Petition at 28 (citing EX1004 ¶ 90). Dr. Freedman’s declaration at paragraph 90, without citation to *Beri* or any other printed publication, merely parrots the Petition language and states that “[b]y setting an ActiveX control to prohibit initiation of a presentation, Beri’s animated presentation does not begin until a subset of resources is acquired as per the ActiveX control.” EX1004 ¶ 90. This is impermissible use of expert testimony to fill a gap in the prior art.

Beri also fails to teach a prerequisite directive because “DrawImmediately” does not “prohibit initiation of said presentation until said subset of resources are

acquired.” As illustrated above, the Independent Claims require a prerequisite directive capable of “prohibit[ing] initiation of said presentation until said subset of resources are acquired.” But the Petition fails to show the presentation (i.e., the animated marquee under Petitioner’s first presentation theory) that contains the “subset of resources” is the same presentation that is being prohibited. Pet. at 28-29. This is insufficient.

In arguing that this claim limitation is met, Petitioner declares that “Beri discloses **prohibiting initiation of said presentation**” as “Beri discloses that the presentation is controlled by a web browser that uses an ActiveX object to specify directives that control how the animation is generated.” Pet. at 28 (bold in original). Petitioner further claims that “Beri teaches the **prohibition of initiation of said presentation** because the animation would otherwise initiate in the web browser without the ActiveX control” and “[o]nly once the image(s) is (are) acquired will the marquee object be rendered.” *Id.* (bold in original).

But Petitioner misunderstands the reference. The “DrawImmediately” attribute in *Beri* cannot prohibit the marquee box—the first presentation theory—from displaying to the user while the images are downloaded. EX1006 at 5:16-18 (“The marquee object has various attributes whose values can be specified by the parameters of the <object> tag.”); *id.* at 5:34-36 (“The marquee object then applies the animation to the image and displays the animated image in the marquee

window.”); *see also* Fig. 2a (showing the marquee box being displayed to the user prior to the images in the animation being acquired). Indeed, *Beri* admits the “<marquee> tag [] provides a visual effect that is similar to the electronic marquees found on some buildings that display the headline news.” *Id.* at 2:7-9. That is, like the electronic marquees found on some buildings, regardless of whether they are displaying the headline news, the display (*i.e.* the presentation) is still visible to the user.

Further, the Petition provides no explanation of how “DrawImmediately” (which is an attribute of an OBJECT) would be capable of prohibiting initiation of the web page containing the OBJECT (which is the second presentation theory) until the particular subset of said set of resources (which it does not identify) are acquired.

Because Petitioner has not shown that *Beri*’s “DrawImmediately” is a prerequisite directive capable of “prohibit[ing] initiation of said presentation until said subset of resources are acquired,” as required in the Challenged Claims, *Beri* therefore fails to render these claims obvious for these additional reasons.

3. *Beri* Fails to Render the Dependent Claims Obvious for the Same Reasons.

Claims 2, 3, 11, and 12 all depend, directly or indirectly, from Claim 1. As such, these claims also require the claimed “prerequisite directive.” As *Beri* does not teach a “prerequisite directive” sufficient to render the element obvious in Claim 1, *Beri* also fails to render the claim element obvious in all claim elements that depend

from Claim 1. Therefore, Petition fails to render these claims obvious for the same reasons discussed above.

**B. The Petition Does Not Establish a Reasonably Likelihood that
Armstrong Alone or in Combination with Any Other Reference,
Discloses All Elements of the Challenged Claims.**

1. Overview of *Armstrong*

Armstrong (EX1008 & EX1009), a textbook entitled *Designing and Using ActiveX Controls*, also describes how to use Microsoft's Internet Explorer proprietary ActiveX software. *Armstrong* explains that "HTML makes it easy to describe static documents for publishing in Web-based environments." EX1009 at 258. It also explains that the OBJECT element allows the embedding of ActiveX controls in a Web page. *Id.* at 258-259.

Armstrong further explains that the OBJECT element has several important attributes, one being the PARAM element. *Id.* at 261. The purpose of the PARAM element is to store property values of the OBJECT. *Id.* Another attribute of the OBJECT element is a data path property, which is specified in a PARAM element. *Id.* at 261-62. Data path properties inform the browser which downloading methodology to use—asynchronously v. synchronously. *See id.* Including a data path property instructs the browser to download the image asynchronously while the exclusion of the property within the PARAM element instructs the browser to download the image synchronously. *Id.* at 262. Thus, inclusion of a data path property is used to enable

progressive rendering of images because remote resources download asynchronously. *Id.* at 263.

2. *Armstrong* Fails to Render the Independent Claims Obvious Because It Does Not Teach or Suggest a Prerequisite Directive as Claimed.

Armstrong also fails to teach, suggest, or render obvious a “prerequisite directive” that either (1) indicates that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation, *see* Claims 1[b], 22[c], 23[b], and/or (2) prohibits initiation of said presentation until said subset of resources are acquired. *See* Claims 1[d], 22[e], 23[d].

The Petition identifies “a web page” with fonts, colors, text strings, images, videos, and audio as the claimed presentation. Pet. at 56. The Petition identifies “embedded resources” such as “images, fonts, colors, and text strings” in the web pages discussed in *Armstrong* as the required “prerequisite directive.” Pet. at 58 (“Embedded resources are designated as prerequisite resources because the presentation of the web page is prohibited until the embedded resources are downloaded . . . Contrastingly, for resources indicated by data path properties like TextPath, the initiation of the presentation of the web page can begin immediately, before the image or other resources pointed to by the data path properties are downloaded.”) In other words, the Petition appears to distinguish between OBJECTs having a PARAM tag with data path properties (allowing asynchronous downloading)

and embedded OBJECTs without data path properties (requiring synchronous downloading and therefore constituting a prerequisite directive). *See* Pet. at 55-58; EX1004 ¶ 183.

Petitioner’s assertion that a PARAM tag without data path property is a prerequisite directive is wrong for at least two reasons. First, a PARAM tag without data path property does not “indicate[] that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation.” Second, it does not “prohibit initiation of said presentation until said subset of resources are acquired.” Because a PARAM tag without data path property fails both, *Armstrong* fails to teach or suggest a “prerequisite directive.” Therefore, the Board should deny institution on the *Armstrong* grounds.

a. *Armstrong* fails to teach a prerequisite directive because the OBJECT element with a PARAM tag in *Armstrong* does not “indicate[] that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation.”

Armstrong fails to teach a prerequisite directive because the “embedded resources” in *Armstrong* do not “indicate[] that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation,” which is a required element for each of the Challenged Claims. Grounds 5-8 of the Petition therefore fail.

A PARAM tag without a data path property does not “indicate[] acquisition of a subset of said resources is a prerequisite for initiating the presentation.” See ’169 patent, cls. 1, 22, 23. Instead, the data path property instructs the browser whether the resource is locally stored (embedded) or remotely stored. EX.1009 at 262 (“Instead of embedding the data for the property within the HTML document, you store a link to the data.”). Exclusion of a data path property does not cause the OBJECT to load all of the resources without the data path property first and then load the remaining properties (those with a data path property) second. Figure 12.1 of *Armstrong* illustrates resources, small and large, that are displayed within an OBJECT.

Id.

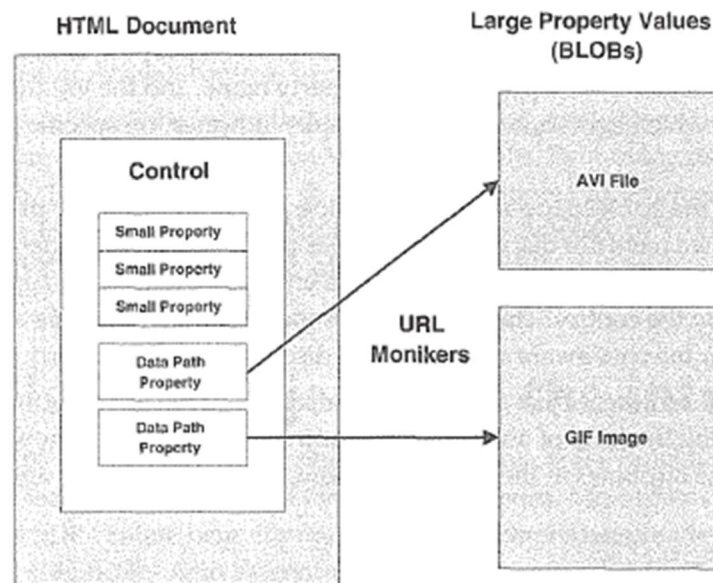
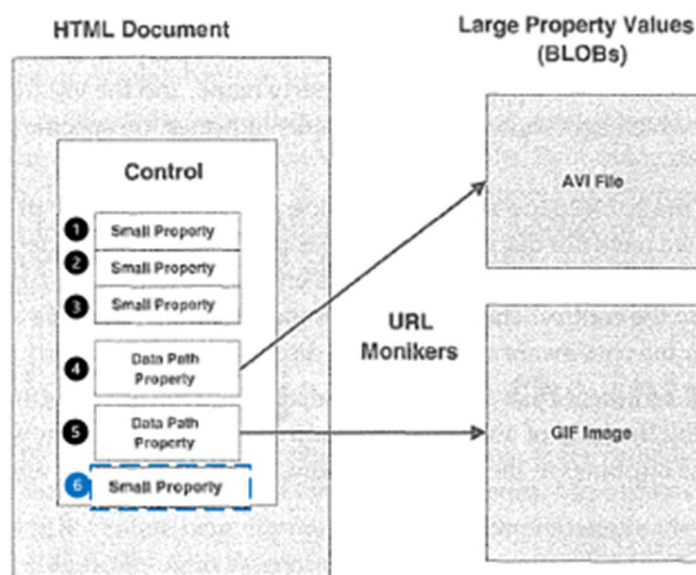


Figure 12.1 Data path properties and links.

This figure illustrates that the “small” resources (e.g., “Small Property”) are embedded directly into the OBJECT. Thus, the “small” resources are specified by a PARAM tag without a data path property, while the “large” resources are stored remotely and pointed to by a PARAM tag with a “data path property.” See EX1009 at 261-63. Modifying *Armstrong*’s Figure 12.1 by adding another “Small Property” after the last “Data Path Property,” as shown below (in blue), illustrates why the absence of a data path property is not a prerequisite directive.



(Modified) Figure 12.1 Data path properties and links.

That is, the web browser will read and execute, in order, the HTML code corresponding to the “HTML Document” shown in Figure 12.1. *Armstrong* teaches when the browser encounters the “small resource,” identified by a PARAM tag without a data path property in steps 1-3 of Modified Figure 12.1, the PARAM tag

instructs the browser that this is a “synchronous operation” and each function must complete before moving on to the next operation. EX1009 at 221 (“[s]ynchronous operation . . . is how we typically develop programs. When we make a function call, the program **waits until the function operation is completed before returning.**”) (emphasis added). Following, in steps 4 and 5 of Modified Figure 12.1, the browser encounters the HTML code associated with the “large resources.” Because each “large resource” is a “data path property,” it instructs the browser that these resources are to progressively render allowing the browser to continue to the next operation. *Id.* at 263 (“There are four key points to remember when you’re working with data path properties: They **enable progressive rendering of images. Asynchronous downloading allows the container to load and instantiate several controls at the same time.** . . .”) (emphasis added). *Armstrong* teaches “[a]synchronous I/O allows the process to **start a read or write operation and then to continue with other tasks.**” *Id.* at 221 (emphasis added). Thus, the “large resources” will begin to progressively render (display to the user) while beginning to load step 6. *Id.* In step 6 of Modified Figure 12.1, the browser encounters another “small resource,” which it will download until it completes. But if the absence of a data path property was a prerequisite directive, all the “small resources”—steps 1-3 and 6—would have been acquired prior to any presentation (displayed in steps 4-5) to the user as required by the claims. As such, Petitioner’s argument fails.

Further, Figure 12.5 in *Armstrong* (and its corresponding code) contradicts Petitioner's assertions that a PARAM tag without a data property is a prerequisite directive. Figure 12.5 in *Armstrong* (EX1009 at 289) illustrates the following:

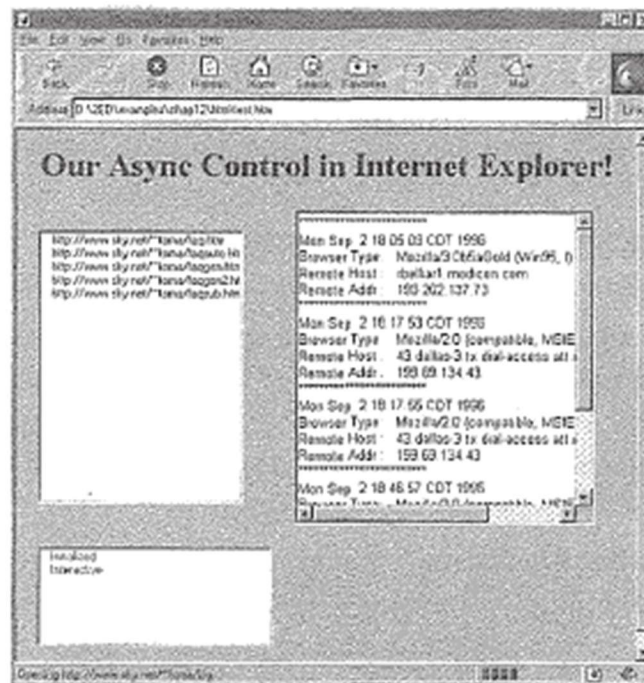


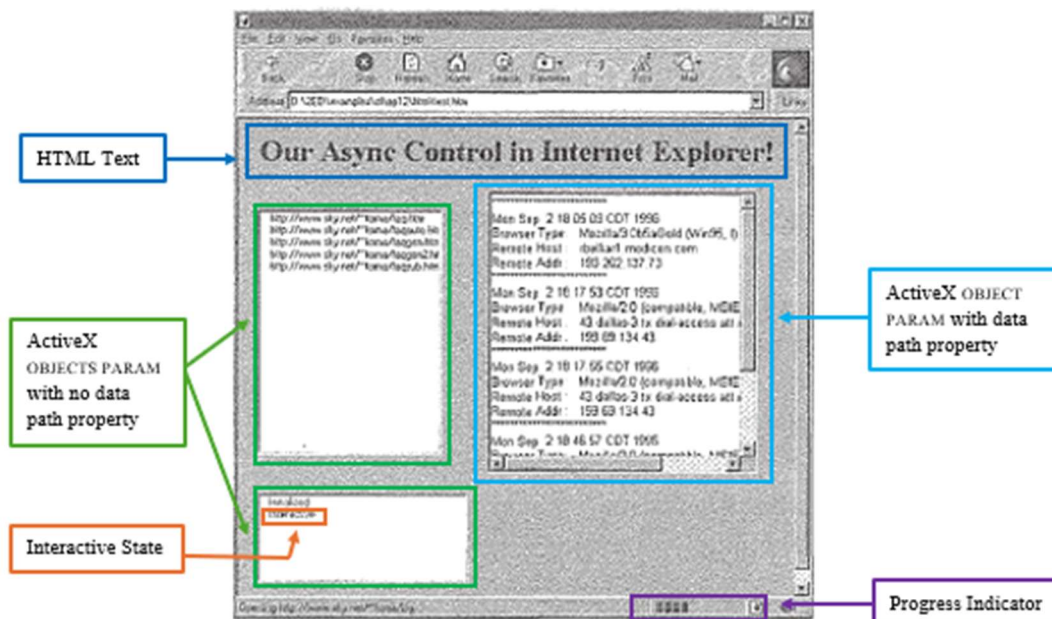
Figure 12.5 The Async control in Internet Explorer.

Armstrong associates the following code with Figure 12.5.

<pre><OBJECT ID="ListBox2" WIDTH=227 HEIGHT=95 CLASSID="CLSID:8BD21D20-EC42-11CE-9E0D-00AA006002F3"> <PARAM NAME="BackColor" VALUE="16777215"> <PARAM NAME="ForeColor" VALUE="255"> <PARAM NAME="ScrollBars" VALUE="3"> <PARAM NAME="DisplayStyle" VALUE="2"> <PARAM NAME="Size" VALUE="5979;2512"> <PARAM NAME="MatchEntry" VALUE="0"> <PARAM NAME="FontCharSet" VALUE="0"> <PARAM NAME="FontPitchAndFamily" VALUE="2"> </OBJECT></pre>	<pre><SCRIPT LANGUAGE="VBScript"> <!-- Sub Async1_ReadyStateChange(NewState) Select Case NewState Case 0 ListBox2.AddItem "Initialized" Case 1 ListBox2.AddItem "Loaded" Case 2 ListBox2.AddItem "Loading" Case 3 ListBox2.AddItem "Interactive" Case 4 ListBox2.AddItem "Complete" End Select end sub --></pre>
--	--

See EX1009 at 287-288.

Annotating *Armstrong*'s Figure 12.5 to draw out the various concepts illustrated therein is helpful to understand the deficiencies in Petitioner's arguments.



(Annotated) Figure 12.5 The Async control in Internet Explorer.

As shown above, two ActiveX OBJECTS without data path properties (shown in green), HTML text (shown in blue), and an ActiveX OBJECT with a data path property (shown in light blue) are all being displayed to the User despite the bottom ActiveX OBJECT without a data path property only being in the “Interactive” state (shown in orange) and not the “Complete” state. *Armstrong* states:

[i]f this is our first time through and if we have some data, we call SetText, which is a method in our control that places the data in the RichEdit control. This approach quickly provides some data for the user to view. By setting the control’s ready to state to interactive, we indicate that the control can handle keystrokes. When all the data has been received, as indicated by the LASTDATANOTIFICATION

flag, we update the RichEdit control with all the text and notify the container that the control has completed downloading and is fully operational.

Id. at 279 (emphasis added).

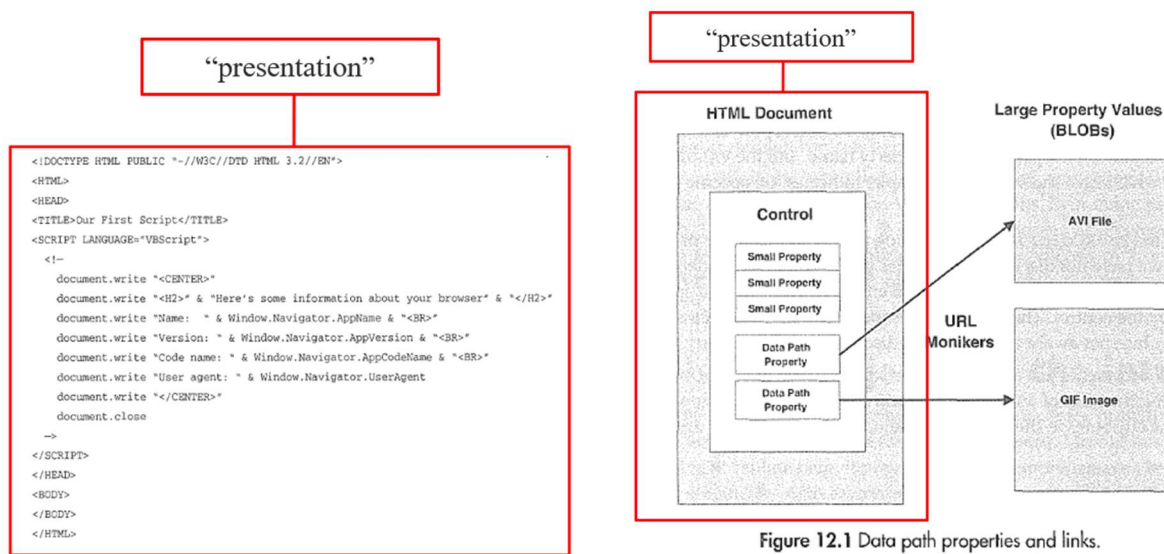
Thus, the alleged prerequisite directive—a PARAM tag without a data path property—did not indicate that the “small” resource was part of the subset of said resources whose acquisition was a prerequisite for initiating the presentation in Modified Figure 12.1. *See* Pet. at 52 (“A data path property enables ‘progressive rendering.’ EX1009, 263; EX1004 ¶169. Progressive rendering allows large resources to be displayed asynchronously. EX1009, 263; EX1004 ¶169.”); *see also id.* at 56 (explaining that asynchronous display means the user does not wait for loading). Nor did the alleged prerequisite directive prohibit “ListBox2,” the HTML text, or the ActiveX object with data path property (“Async1”) from being displayed to the user prior to the subset of said resources whose acquisition was a prerequisite for initiating the presentation were acquired in Annotated Figure 12.5.

Thus, for at least the above reasons, a PARAM tag without a data property does not “indicate[] that acquisition of a subset of said set of resources is a prerequisite for initiating the presentation.” Consequently, *Armstrong* fails to disclose a prerequisite directive. Therefore, the Board should deny institution for

the *Armstrong* grounds because *Armstrong* fails to render obvious any challenged claim.

- b. *Armstrong* also fails to teach a prerequisite directive because the OBJECT element with a PARAM tag in *Armstrong* does not “prohibit initiation of said presentation until said subset of resources are acquired.”**

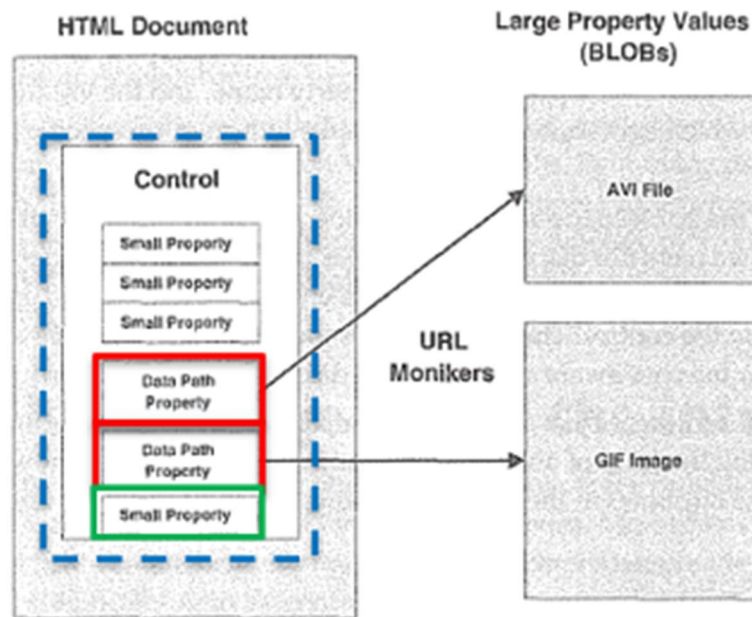
The OBJECT element with a PARAM tag in *Armstrong* does not “prohibit initiation of said presentation until said subset of resources are acquired.” As an initial matter, Petitioner takes the position that a web page (i.e., HTML document) is the claimed presentation. *See* Pet. at 56 (“*Armstrong* teaches the use of ActiveX software to display to the user a presentation consisting of a web page with various **resources**, such as fonts, colors, text strings, images, videos, and audio”), 57 (“The web pages may have embedded resources such as images, fonts, colors, and text strings, and that the ‘primary purpose of HTML is to specify text- and image-based’ web pages”). These alleged “presentations” are depicted in figures within *Armstrong*:



EX1009 at 259 (annotated)

EX1009 at 262 (annotated)

But these web pages cannot be the claimed presentations because the alleged prerequisite directive (i.e., PARAM tag without data path property) does not prohibit the display of the web page. Thus, Petitioner’s assertion that “[i]f an OBJECT element has an embedded image, then the presentation will be prohibited until the OBJECT is loaded” is incorrect. *See* Pet. at 60. This is illustrated as shown in the below Modified Figure 12.1 (and discussed above): the embedded image (i.e., “Small Property”) does not prohibit initiation of the “HTML Document” (i.e. the presentation) until said subset of resources are acquired.



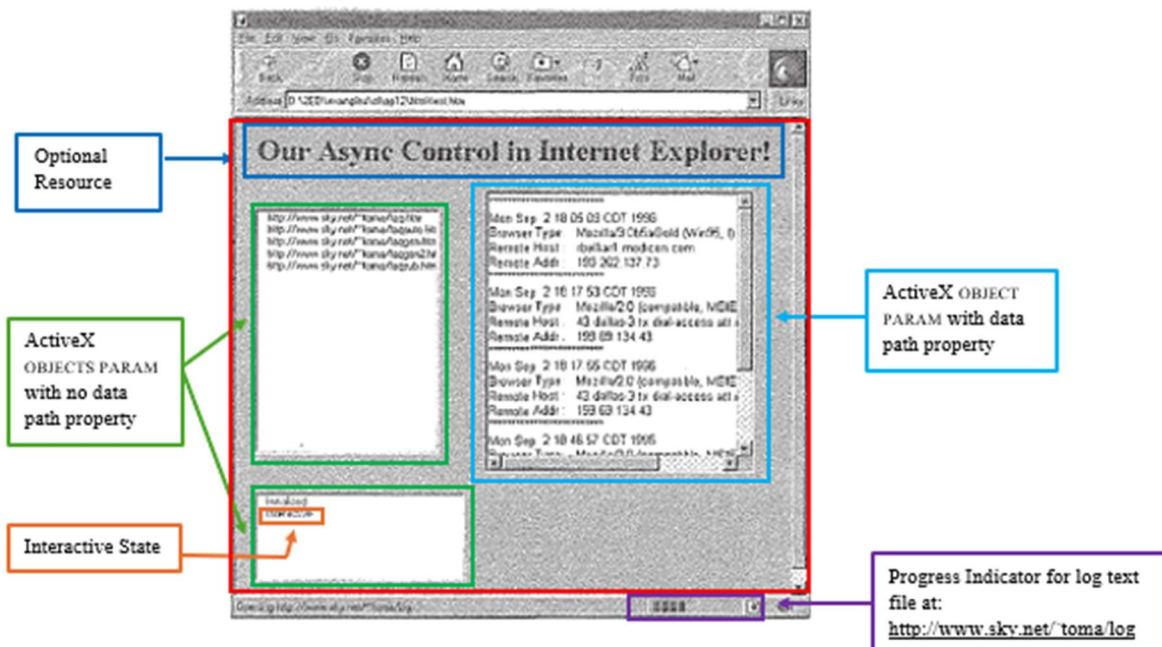
(Modified) Figure 12.1 Data path properties and links.

From (Modified) Figure 12.1³, shown above, it is clear that neither the “HTML Document”, “Control” (in blue) nor the “Data Path Property” (in red) are prohibited by the last “Small Property” (in green) from displaying to the user. EX1009 at 263 (“There are four key points to remember when you’re working with data path properties: They enable progressive rendering of images. Asynchronous downloading allows the container to load and instantiate several controls at the same time. . . .”) (emphasis added). *Armstrong* teaches “[a]synchronous I/O allows the process to start a read or write operation and

³ As with the previous modification of Figure 12.1, *supra*, this modification has added the “Small Property” box (in green) to *Armstrong*’s original Figure 12.1.

then to continue with other tasks.” *Id.* at 221 (italics in original; bold emphasis added). Thus, HTML Document and the “Data Path Property” (in red) will begin to progressively render (display to the user) while also allowing downloading of the last “Small Property.” *Id.*

This is further illustrated in (Annotated) Figure 12.5 (reproduced below), where “test.htm” (i.e. the presentation) is being displayed to the user despite not being in state “Complete.”



(Annotated) Figure 12.5 The Async control in Internet Explorer.

Here, *Armstrong* discloses that a “control is embedded within a Web page using the HTML OBJECT element.” EX1009 at 290. In (Annotated) Figure 12.5, above, the Web page (in red) is visible to the user including both the “optional

resource”—those not embedded by an <object> tag (in blue)—and the embedded objects—with and without a data path property (in green/light blue)—even though the embedded resources are still being acquired.⁴ *Armstrong* states, “Notice the progress indicator in the lower right-hand corner [shown in purple in Annotated Figure 12.5]. In Figure 12.5, the control is downloading a very large (>500 KB) file. The progress functionality of asynchronous property download provides this feedback to the container.” EX1009 at 289. In addition, *Armstrong*, describing the state of “ListBox2” (bottom OBJECT), states:

[i]f this is our first time through and if we have some data, we call SetText, which is a method in our control that places the data in the RichEdit control. This approach quickly provides some data for the user to view. By setting the control’s ready to state to interactive, we indicate that the control can handle keystrokes. When all the data has been received, as indicated by the LASTDATANOTIFICATION flag, we update the RichEdit control with all the text and notify the container that the control has completed downloading and is fully operational.

Id. at 279.

⁴ As described above, the corresponding code for (Annotated) Figure 12.5 is on pages 286-287 of EX1009. This code shows one optional resource and three embedded resources.

Thus, as shown in (Annotated) Figure 12.5, an <object> tag does not “prohibit initiation of said presentation [the alleged Web page] until said subset of resources are acquired [the alleged OBJECTS],” as required by the Challenged Claims. This is because the Web page is displayed to the User prior to the subset of said resources required being acquired.⁵

3. *Armstrong* Fails to Render the Dependent Claims Obvious for the Same Reasons.

Claims 2, 3, 11, and 12 all depend, directly or indirectly, from Claim 1. As such, these claims also require an appropriate “prerequisite directive.” As *Armstrong* does not teach a “prerequisite directive” sufficient to render the element obvious in Claim 1, **Armstrong** also fails to render the claim element obvious in all claim elements that depend from Claim 1. Therefore, the Petition fails to render these claims obvious for the same reasons discussed above.

CONCLUSION

For the foregoing reasons, the Director should decline to institute *inter partes* review of the '169 patent.

⁵ Neither the OBJECT identified by a PARAM without a data path property or the OBJECT identified by a PARAM with a data path property prohibited the Web page from displaying.

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), Patent Owner certifies that this Patent Owner Preliminary Response has a total of 6,902 words as counted by Microsoft Word, exclusive of the cover page, table of contents, table of authorities, mandatory notices under § 42.8, certificate of service, word count, appendix of exhibits or claim listing, and signature block (37 CFR § 42.24(a)). The word count includes include all other text, including headings, footnotes, and quotations. This is within the 14,000-word limit allowed under § 42.24(a)(1)(i).

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2025, a copy of this Patent Owner's Preliminary Response, including all accompanying attachments, appendices, and exhibits, has been served in its entirety via e-mail on Attorneys for Petitioner at the following e-mail addresses:

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