

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.
Petitioner

v.

BLACK HILLS MEDIA, LLC
Patent Owner

Case No. IPR2014-00711
U.S. Patent 8,230,099

**PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION
PURSUANT TO 37 C.F.R. §42.107**

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Exhibit #	Exhibit Description
2001	Patent Owner's Statutory Disclaimer (August 7, 2014)
2002	Mobile Application Distribution Agreement ("MADA") entered by and between Samsung Electronics Co., Ltd. and Google, Inc.
2003	Joint Submission of Corrected Exhibit List, <i>Oracle Am., Inc. v. Google Inc.</i> , Case No. CV-10-103561 WHA (N.D. Ca.) (D.I. 293, Apr. 15, 2012).
2004	Google, Inc.'s Motion to Intervene, <i>In re Digital Media Devices</i> , Inv. No. 337-TA-882 (July 26, 2013).
2005	Order, <i>In re Digital Media Devices</i> , Inv. No. 337-TA-882 (Aug. 19, 2013).
2006	Patent Owner's Claim Charts, <i>In re Digital Media Devices</i> , Inv. No. 337-TA-882.
2007	Declaration of Garth Loy, D.M.A., Patent Owner's Response, <i>Yamaha Corp. of Am. v. Black Hills Media LLC</i> , IPR2013-00597, at Exhibit 2011 (June 13, 2014).
2008	Motion to Amend, <i>Yamaha Corp. of Am. v. Black Hills Media LLC</i> , IPR2013-00597, Paper 25 (June 13, 2014).
2009	"Microsoft Windows Media Player 7 Handbook," Microsoft Press, ISBN 0-7356-1 178-5, Copyright ©2000.

**PATENT OWNER PRELIMINARY RESPONSE
PURSUANT TO 37 C.F.R. § 42.107**

I. INTRODUCTION

The Patent Owner Black Hills Media, LLC (“Patent Owner”) respectfully submits this Preliminary Response in accordance with 35 U.S.C. § 313 and 37 C.F.R. § 42.107, in response to the Petition for *Inter Partes* Review (“Petition”) (Paper 1) filed by Samsung Electronics Co., Ltd. (“Petitioner”). This Preliminary Response is timely, as it is being filed within three months of May 7, 2014, mailing date of the Notice of Filing Date Accorded to the Petition (Paper 3) of April 30, 2014.

In a related *inter partes* review proceeding (IPR2013-00597) concerning U.S. Patent No. 8,230,099 (the ‘099 Patent), Patent Owner filed a Motion to Amend canceling Claim 1 of the ‘099 Patent. Consistent with the Motion to Amend and to avoid any ambiguity, contemporaneously with the filing of this Preliminary Response, the Patent Owner has filed a statutory disclaimer with respect to Claim 1 pursuant to 37 C.F.R § 42. 107(e). (Ex. 2001.)

The Patent Owner respectfully contends that a trial should not be instituted in this matter because the Petitioner has failed to identify all real parties in interest, the Petitioner has raised redundant grounds, because none of the grounds raised by the Petitioner gives rise to a reasonable likelihood of Petitioner prevailing with

respect to any of Claims 10-12 (the “Challenged Claims”) the ‘099 Patent, and because Patent Owner has filed a statutory disclaimer with respect to Claim 1 of the ‘099 Patent.

II. THE PETITIONER HAS NOT IDENTIFIED ALL REAL PARTIES-IN-INTEREST UNDER 37 C.F.R. § 42.8

Samsung’s Petition should be denied because it fails to identify all real parties in interest as required under 35 U.S.C. § 312(a)(2) and 37 C.F.R. § 42.8(b).

“A petition filed under section 311 may be considered only if . . . the petition identifies all real parties in interest.” 35 U.S.C. § 312(a)(2). The Office Rules also require that the petitioner provide certain mandatory notices, including identifying all real parties in interest. 37 C.F.R. § 42.8(b). This requirement is not a mere formality. Rather, a clear identification of the real party in interest is important to ensure both the proper application of the statutory estoppel provisions and the ability of the judges of the PTAB to recuse themselves in view of any conflict-of-interest apparent from the disclosure. *See* 37 C.F.R. § 42.73(d)(1) and Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 Fed. Reg. 48612, 48617 (Aug. 14, 2012). In addition, “[t]he identity of a real party in interest might also affect the credibility of evidence presented in a proceeding.” *Notice of Roundtable on Proposed Requirements for Recordation of Real-Party-in-Interest Information*

Throughout Application Pendency and Patent Term, 77 Fed. Reg. 70385, 70386-87 (Nov. 26, 2012). The petitioner has the burden to identify all real parties in interest. Failure to do so frustrates the purpose of the proceeding.

At a minimum, it appears that in addition to Samsung, Google, Inc. (“Google”) is also a real party in interest in this proceeding.

Patent Owner has recently discovered the existence of a Mobile Application Distribution Agreement¹ (“MADA,” Ex. 2002) between Samsung and Google that includes indemnification provisions (Section 11, Ex. 2002 at 11)) in the event of claims of patent infringement against Samsung arising out of any claim that certain Google Applications infringe any intellectual property right.

As noted in its mandatory notices, Patent Owner has made patent infringement claims against Samsung in proceedings before the U.S. District Court for the Eastern District of Texas, in a case styled *Black Hills Media, LLC v. Samsung Elecs. Co., Ltd., et al.*, Civil Case No. 2:13-cv-00379-JRG (E.D. Tex.),

¹ The Google-Samsung MADA is a public trial exhibit used in the matter of *Oracle America, Inc. v. Google Inc.*, Case No. CV 10-03561 WHA (N.D. Ca.). See Ex. 2003, Joint Submission of Corrected Exhibit List, Doc. 293, filed Apr. 15, 2012, referencing the MADA as Exhibit 2775 at page 107, and noting no limitations on its use.

and before the International Trade Commission Investigation No. 337-TA-882 (the “ITC Action”). (Paper 3 at 2-3.) Those proceedings concern Samsung’s Android devices that employ Google’s products and services, consistent with those covered by the MADA produced in the matter of *Oracle America, Inc. v. Google Inc.*, Case No. CV 10-03561 WHA (N.D. Ca.).

The MADA explicitly states that Google, once notified of an indemnification claim covered by the MADA, “***will defend, or at its option settle, any third party lawsuit or proceeding brought against [Samsung]***” arising out of any claim that the Google Applications infringe any patent. (Ex. 2002 at 11.1 (emphasis added).) Furthermore, under the MADA, Google has “***full control and authority over the defense.***” (Ex. 2002 at 11.3 (emphasis added).) Thus, under the MADA, Google has full control of the defense and settlement of any third-party infringement action implicating Google’s products and services, including any proceeding, such as this Petition.

Consistent with its indemnity obligations under the MADA, in the ITC Action, Google filed a motion to intervene (“Motion”) one month after the ITC Action commenced.² (Ex. 2004.) Google’s Motion was granted by the presiding

² While Samsung notes in its Petition that the ITC proceeding with respect to the ‘099 patent was subsequently terminated “before a decision” on the merits,

judge. (Ex. 2005.) At the very least, an inference can be made that Google was “notified” of the ITC Action by its indemnitee(s).

In its Motion, Google said it has a right to intervene because Patent Owner’s complaint named certain Google and YouTube services as infringing patent claims: “*The claim charts that accompanied the complaint specifically identify certain proprietary Google and YouTube products and services operating on Android devices manufactured by each of the respondents* as allegedly infringing or allegedly providing a portion of the infringing functionality of various patent claims.” (Ex. 2004 at 2-3 (emphasis added).) As an example, Google’s Google Play Music and DIAL-enabled YouTube applications operating on Android devices manufactured by Samsung are implicated as allegedly providing infringing functionality of Claims 1 and 10 of the ‘099 Patent, which are challenged by Samsung in this proceeding. (Ex. 2006, Patent Owner’s claim charts

Samsung also notes that the ‘099 patent is “currently the subject of litigation against multiple defendants in the Eastern District of Texas, the District of Delaware and the Central District of California, including the action captioned *Black Hills Media, LLC v. Samsung Elecs. Co., Ltd. et al.* (Civil Action No. 2-13-cv-00379 (E.D. Tex.)).” (Paper 1 at 1.)

submitted in the ITC Action titled “Samsung Infringement of Claims 1, 10, 11, 12, at 2-4, 5, 9, 10, 12-14, and 22.”)

In support of its motion to intervene, Google further stated that (1) “***Google has a compelling interest in this investigation as a result of complainant’s assertion that the alleged infringement is based, in part, on respondents’ devices and their use of proprietary Google products and services***, including Google Play Music, Google Maps/Latitude and YouTube” and that (2) “Google also has a ***business interest*** in the continued importation and sale of Respondents’ accused products that utilize Google proprietary products and services. Google has invested substantial resources in developing and supporting these products and services ***and has a strong interest in assuring that Respondents can continue to utilize these products and services*** by importing their products into the United States.” (Ex. 2004 at 5, 6 (emphasis added).)

Whether a non-party is a real party-in-interest or privy for the purposes of an *inter partes* review proceeding is a “highly fact-dependent question.” *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756 (August 14, 2012). Factors to consider in determining whether a party is a real party-in-interest may include whether a non-party exercises control over a petitioner’s participation in a proceeding. (*Id.* at 48,756, 48,759). Other factors may include whether a non-party is funding the proceeding or directing the proceeding. (*Id.* at 48,759-60). To

determine whether a party is a real party-in-interest, the USPTO applies traditional common law principles. (*Id.*)

In addition to indemnitee-indemnitor relationship between Samsung and Google and Google's indemnification obligations under MADA, the intervention of Google in the ITC Action creates a strong presumption of a common interest or joint defense relationship between these two parties – and that this petition was filed at the behest, control, and authority of Google.

As admitted by Google in its motion to intervene, Google has “**a business interest** in the continued importation and sale of [Samsung's] accused products that utilize Google's proprietary products and services . . . and has **a strong interest** in assuring that [Samsung] can continue to utilize these products and services by importing their products into the United States.” (Ex. 2004 at 6 (emphasis added).) Google's ability in ensuring Samsung's continued ability to utilize Google's products and services depends, in-part, on its ability to establish that the patent claims at issue in this proceeding are invalid.

Besides Google's interest in ensuring Samsung's continued ability to utilize its products and services, Google has an additional interest in the outcome of this proceeding. For example, if the '099 Patent's validity is confirmed, Google could be liable for any damages imposed in the related district court litigations. Google has chosen not to file a petition requesting an *inter partes* review of the '099

patent, presumably for strategic reasons such as, for example, to avoid any estoppel with regard to the references cited in the present petition and to have multiple bites at the apple. Instead, Google appears to rely on its indemnitee-customer, Samsung, to challenge the validity of the '099 Patent and pursue their common interests in the present proceeding for them.

For these reasons, the Board should dismiss this petition on the grounds that Petitioner has failed to identify the real parties-in-interest. *See, e.g., Asahi Glass Co. v Toledo Engineering Co.*, 505 F. Supp. 2d 423, 434 (W.D. Ohio 2007) (finding privity based on an indemnification agreement, retention of shared counsel and a joint defense agreement.)

Should the Board decline to dismiss this petition at this time, discovery is warranted to determine the additional details concerning the relationship between Petitioner and Google and the extent to which Google has participated in the preparation and funding of the present petition. The PTAB has allowed such additional discovery when it is in the interests of justice to determine which party or parties are the real parties-in-interest. *See, e.g., RPX Corp. v. VirnetX, Inc.*, IPR2014-000171, Paper 25 (February 20, 2014).

III. *Inter Partes* Review IPR2013-00597

The Petitioner refers to *inter partes* review IPR2013-00597 (the “‘597 IPR”), which was filed by Yamaha Corporation of America (“Yamaha”) on

September 19, 2013, to challenge certain claims in the ‘099 Patent that are also at issue in this proceeding, in support of its claim construction. (Paper 1 at 5, 6.) The Board issued an Institution Decision in the ‘597 IPR proceeding on March 20, 2014. On June 13, 2014, the Patent Owner filed a Patent Owner’s Response pursuant to 37 C.F.R. § 42.121 with a supporting Declaration by Gareth Loy, D.M.A (the “Loy Declaration”) as well as a Motion to Amend pursuant to 35 U.S.C. § 316 and 37 C.F.R. § 42.121. The Patent Owner submits herewith the Loy Declaration and the Motion to Amend as Exhibits 2007 and 2008, respectively. The Loy Declaration is relevant at least with respect to the construction of the term “playlist” and the ground of unpatentability based on anticipation by Bi raised against Claims 10, 11, and 12 (the same claims were challenged as being anticipated by Bi in the ‘597 IPR).³

³ Patent Owner believes that the inclusion of Exhibit 2007 in this proceeding complies with 37 C.F.R. § 42.107 (c), which prohibits submission of new testimony evidence in a preliminary response beyond that already of record, except as authorized by the Board.” Specifically, the Board explained in *Anova Food, LLC v. Leo Sandau and William R. Kowalski* (IPR2013-00114, Paper 11, (June 25, 2013)), that the prohibition against new testimony under 37 C.F.R. § 42.107 (c) “applies only to ‘new’ testimony that was taken specifically for the purpose of the

The Patent Owner further notes that in the Motion to Amend filed in the 597 IPR on June 13, 2014, the Patent Owner moved to cancel Claims 1 and 9 of the ‘099 Patent. Claim 1 of the ‘099 Patent is one of the Challenged Claims in the present proceeding. In view of the statutory disclaimer concurrently filed by the Patent Owner, the Patent Owner does not provide any discussion of the grounds raised against Claim 1 of the ‘099 Patent in the present proceeding.

IV. SUMMARY OF THE ‘099 PATENT

The ‘099 Patent relates to systems and methods for sharing playlists. As described in the Background section of the ‘099 Patent, the prior art playlist sharing systems “possess inherent deficiencies, which detract from their overall effectiveness and desirability.” (Ex. 1001 at 2:3-5.) “For example, according to contemporary methodology, playlists are only communicated to and used with general purpose computers, such as IBM compatible personal computers (PCs) and Apple computers.” (Ex. 1001 at 2:6-9.) “Therefore, it is desirable to provide

inter partes review proceeding at issue, as supported by the discussion and the comments that accompanied the rule.” (*Id.* at 3.) Thus, the Board in *Annova Food, LLC* found a declaration previously filed in a district court litigation, as not new testimonial evidence and hence “appropriately submitted with the response.” (*Id.* at 3.)

system and method for sharing playlists, wherein the playlists are communicated to, stored in, and displayed upon player devices other than general purpose computers.” (Ex. 1001 at 2:21-24.)

In view of the above background, the ‘099 Patent describes the invention as “a system and method for sharing playlists, wherein the playlists are communicated to, stored in, and displayed upon player devices other than general purpose computers.” (Ex. 1001 at 11:4-7.)

In one aspect, the ‘099 Patent provides a method in which a playlist is communicated, e.g., from a server, to a remote control. After the playlist has been communicated to the remote control, “the playlist may be displayed thereon and thus used to choose which selection therefrom is to be played” by a media player. (Ex. 1001 at 9:1-8.)

Figure 2 of the ‘099 Patent, which is reproduced below, depicts an embodiment of the invention in which a playlist can be communicated from a server 11 via the Internet 12 to a remote control 18 for a dedicated media player 17, which is not a general purpose computer. The playlist can be displayed on the remote control 18 to allow a user to make selections therefrom to be played by the dedicated media player. (Ex. 1001 at 9:1-8.)

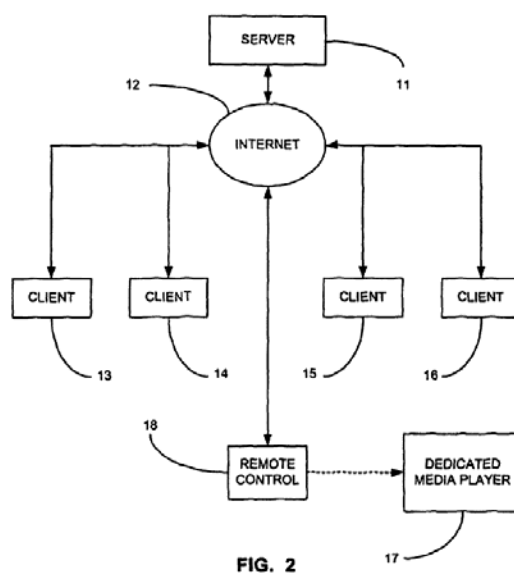
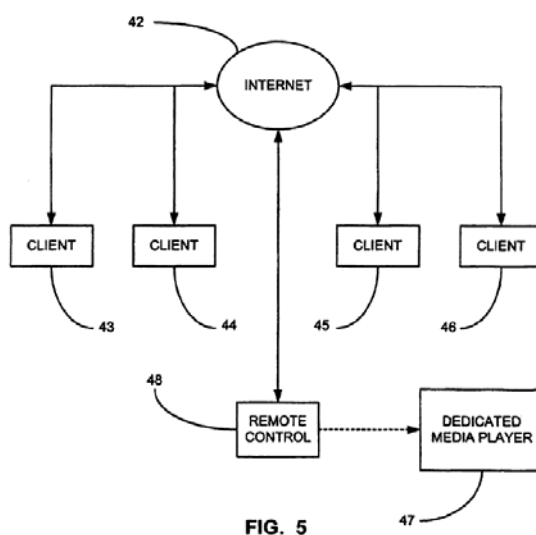


Figure 5 of the '099 Patent, reproduced below, depicts an embodiment of the invention in which a remote control 48 can communicate, via the Internet 42, with a plurality of clients 43-46 on a peer-to-peer basis. (Ex. 1001 at 9:54-10:27.)



A playlist of a client can be communicated to the remote control 48, where the playlist can be stored and used. (Ex. 1001 at 10:20-26.) The playlists may subsequently be forwarded to another device, such as a dedicated media player 47.

(Ex. 1001 at 10:26-27.) “After the playlist has been communicated to the remote control 48, the playlist may be displayed thereon and thus used to choose which selection therefrom is to be played.” (Ex. 1001 at 10:28-30.)

V. Summary of Challenged Claims

Petitioner challenges Claims 1 and 10-12 of the ‘099 Patent. Claim 1 is an independent claim that discloses a method which comprises receiving, at a wireless handheld remote control, a playlist from a remote source; and presenting, at the wireless handheld remote control, the playlist to a first user associated with the wireless handheld remote control such that the first user is enabled to select at least one item from the playlist for playback by a media player device which is associated with and separate from the wireless handheld remote control. As noted above, contemporaneously with the filing of this Preliminary Response the Patent Owner has filed a statutory disclaimer with respect to Claim 1 pursuant to 37 C.F.R § 42. 107 (e). (Ex. 2001.)

Claim 10 is an independent claim directed to a wireless handheld remote control, which comprises a communication interface communicatively coupling the wireless handheld remote control to a remote source via a network and a control system associated with the communication interface and adapted to: receive a playlist from the remote source; and present the playlist to a first user associated with the wireless handheld remote control such that the first user is enabled to

select at least one item from the playlist for playback by a media player device which is associated with and separate from the wireless handheld remote control.

Claim 11 is an independent claim directed to a method, which comprises receiving, at a media player device, a playlist from a remote source; and communicating the playlist from the media player device to a wireless handheld remote control associated with and separate from the media player device, wherein, at the wireless handheld remote control, the playlist is presented to a first user associated with the wireless handheld remote control and used by the first user to select at least one item from the playlist for playback by the media player device.

Claim 12 is an independent claim directed to a media player device, which comprises a communication interface communicatively coupling the media player device to a remote source via a network and a control system associated with the communication interface and adapted to: receive a playlist from the remote source; and communicate the playlist from the media player device to a wireless handheld remote control which is associated with and separate from the media player device, wherein, at the wireless handheld remote control, the playlist is presented to a first user associated with the wireless handheld remote control and used by the first user to select at least one item from the playlist for playback by the media player device.

VI. Claim Construction

1. Legal Standard

In an *inter partes* review, a claim of an unexpired patent is construed using the “broadest reasonable construction in light of the specification.” 37 C.F.R. §42.100(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). A claim term is given its ordinary and customary meaning in the context of the specification as it would be understood by one of ordinary skill in the art. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc); *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The broadest reasonable construction of the claim language must take into account any definitions presented in the specification. *Id.* (citing *In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002).)

2. A Person of Ordinary Skill in the Art

Petitioner alleges, in a conclusory fashion, that a hypothetical person of ordinary skill in the art “would typically have *at least* a B.S. degree in electrical engineering, computer engineering or computer science and *approximately* two years of professional experience with computer networking and multimedia technologies, or the equivalent.” (Paper 1 at 7 (emphasis added).) Petitioner provides no rationale for its definition, including why “*at least* a B.S. degree in electrical engineering” is necessary or why “*approximately two years* of

professional experience” is needed to qualify as one of ordinary skill in the art.

Petitioner’s proposed definition is arbitrary and should be rejected.

Petitioner’s definition also should be rejected because its use of the open-ended terms “approximately” and “at least” would include persons who are far over-qualified to be considered of “ordinary skill” in the art. Surely, someone with a Ph.D. and more than 15 years of professional experience, for example, is not “a person of ordinary skill in the art” because that person would possess a much higher level of understanding of the technology disclosed in the ‘099 Patent than a similar person with a B.S. and one year of experience, yet such a person would meet Petitioner’s definition.

Moreover, the term “approximately two years of professional experience” is vague as it does not clearly identify how many years of professional experience a person would need to have to qualify as a person of ordinary skill in the art under Petitioner’s definition.

The Patent Owner proposes instead that the Board adopt the following definition: a person of ordinary skill in the art would have *a bachelor’s degree in computer science or electrical engineering and one year of practical experience with networked multi media*. Should a trial be instituted, Patent Owner reserves the right to present an alternative definition for a person of ordinary skill in the art, along with additional evidence as to the various factors to be taken into account in

determining the level of ordinary skill, such as the type of problems encountered in the art at the time of the invention, the sophistication of the technology, and the education level and professional capabilities of active workers in the field. MPEP § 2141(II)(C) (8th Ed., Rev. 9, August 2012.)

3. “Playlist”

The Patent Owner proposes that the term “playlist” be construed as “a list referencing media items arranged to be played in a sequence.” The Petitioner proposes that the term “playlist” be construed as “a list of media selections.” (Paper 1 at 5.) In support of its proposed construction, the Petitioner alleges that the specification of the ‘099 Patent “uses broad language to describe playlists as containing selections such as music and movies.” (*Id.*) The Petitioner further alleges that the broadest reasonable construction of the term “playlist” does not require that the constituent media items be arranged to be played in a sequence. (*Id.*)

Petitioner’s construction for the term “playlist” is flawed as it is not consistent with the way that term is used in the specification of the ‘099 Patent, and ignores that the specification of the ‘099 Patent makes clear that the media items to which a playlist refers are *arranged to be played in a sequence*.

As stated in the Loy Declaration, the Board has previously construed the term “playlist” as “a list of media selections” in the ‘597 IPR proceeding. (Ex.

2007 at ¶ 45). Patent Owner in this proceeding urges the Board to construe “playlist” to mean “a list referencing media items arranged to be played in a sequence.” Such construction would be consistent with both the plain and ordinary meaning of the term “playlist” and its broadest reasonable construction in view of the ‘099 specification.

The Petitioner refers to different portions of the ‘099 specification in isolation to support its construction of the term “playlist.” As discussed below, these portions, when read in the context of the entirety of the specification of the ‘099 Patent, in fact support the Patent Owners’ proposed construction for the term “playlist” as “a list referencing media items arranged to be played in a sequence.”

In particular, the Petitioner states that the specification of the ‘099 Patent in the “Background of the Invention” discloses that “[a] playlist is a list of a user’s favorite selections.” (Paper 1 at 5; Ex. 1001 at 1:33-34.) The paragraph of the ‘099 Patent in which the above sentence appears is reproduced below:

Playlists for music and movies are well known. A playlist is a list of a user’s favorite selections. Popular personal computer (PC) media playing programs, such as Windows Media Player (a trademark of Microsoft Corporation), offer the capability for a user to compile a playlist. The user may subsequently select items to be played from the playlist and the media playing program then plays the selected items. The use of such a playlist simplifies the selection process and

thus makes listening to music or viewing movies easier and more enjoyable.

(Ex. 1001 at 1:33-42.)

As explained in the Loy Declaration, it was well known to one of ordinary skill in the art in the timeframe of the '099 Patent (*i.e.*, 2004) that a playlist generated by Windows Media Player (a trademark of Microsoft Corporation) is a list referencing media items that are arranged to be played in a sequence. (Ex. 2007 at ¶ 48.) For example, the Windows Media Player 7 Handbook describes the “shuffle” function as follows: “This plays the items in the current playlist in a ***random order. It does not change the order of the items in the playlist***, only the order in which they are played while the shuffle option is selected.” (Ex. 2009⁴ at 40 (emphasis added).) The description of the “shuffle” function makes clear that “the items in a playlist” generated by the Windows Media Player are arranged to be played in a particular order. If the items in a playlist generated by Windows Media Player were not arranged to be played according to an order, the statement

⁴ Ex. 2009 was previously submitted in the '597 IPR proceeding as Ex. 2022 in connection with the Patent Patent Owner's Response pursuant to 37 C.F.R. § 42.121 along with a supporting Loy Declaration.

that the shuffle function “*does not change the order*” in which they are played would make no sense.

Thus, as explained in the Loy Declaration, one of ordinary skill in the art in the timeframe of the ‘099 Patent would have understood that a playlist generated by the Windows Media Player 7 would be a list of media items that are arranged to be played in a sequence. (Ex. 2007 at ¶ 42.)

The references to the term “playlist” in the ‘099 Patent is not limited to the above paragraph. In fact, the ‘099 Patent makes multiple references to the term “playlist,” all of which are consistent with the construction of that term as proposed by the Patent Owner. For example, the ‘099 Patent specifies: “The player device is configured to receive a playlist, *queue the playlist*, display the playlist, and play a selection from the playlist.” (Ex. 1001 at Abstract (emphasis added).) One of ordinary skill in the art would understand the phrase “queue the playlist” to mean that the media player device would play the entire media content of the playlist in sequence. (Ex. 2007 at ¶ 44.)

The ‘099 Patent also states:

“Playlists also facilitate the playing of a plurality of selections in a particular sequence. That is, the playlist may be compiled in an order in which the playing of selections therefrom is desired. The selections may then be *automatically played sequentially* from the playlist.

Typically, the *selections may be played randomly* from a playlist.

(Ex. 1001 at 1:45-52 (emphasis added).)

This passage further supports Patent Owner's construction of the term "playlist" by stating that a playlist may be "*automatically played sequentially*" or may be played randomly. The Petitioner makes an unsupported leap that the statement that "the playlist may be compiled in an order in which the playing of selections therefrom is desired," means that such compilation is optional. (Paper 1 at 5.)

The Petitioner's interpretation of this passage is not consistent with the way the term "playlist" is used in the '099 Patent. In particular, one of ordinary skill in the art would understand the above passage to mean that the playlist may be compiled in an order desired by a user, or the user may not have any input regarding the order in which the media items are arranged in a playlist. For example, the '099 Patent discloses that "the playlist may be compiled in an order in which the playing of selections therefrom is desired." (Ex. 1001 at 1:49-51). Further, the '099 Patent discloses that "[a]ccording to another aspect, the present invention comprises a method of defining a play list, wherein the method comprises defining a user profile and the user profile is used to determine selections that may be enjoyed by a user." (Ex. 1001 at 4:14-17.) Regardless of how a playlist is put together or compiled, once it is compiled, it will be

“automatically played sequentially” unless the user directs it to be played otherwise.

The Loy Declaration explains that the recitation in the ‘099 Patent that “the playlist may compiled in an order in which the playing of selections therefrom is desired” would be understood by one of ordinary skill in the art to mean that the playlist may be compiled in an order that is desired by a user, or the user may not have an input regarding the order in which the media items are played. (Ex. 2007 at ¶ 46.)

The Petitioner further states that the specification of the ‘099 Patent makes clear that the user may also “select items to be played from the playlist,” and that “selections may also be played randomly from a playlist.” (Paper 1 at 5; Ex. 1001 1:37-39; 1:52-53.) The Petitioner then concludes that “[b]ased on these disclosures, one of skill in the art would not understand the term ‘playlist’ to include a requirement that the contents of the playlist be arranged to play in any particular sequence.” (Paper 1 at 5, 6.)

The Petitioner’s reasoning is flawed. The disclosure in the ‘099 Patent that the items from a playlist may be played randomly is not inconsistent with the Patent Owner’s contention that the ‘099 Patent uses the term “playlist” as a list referencing media items arranged to be played in a sequence. Indeed, the very concept of a playlist relies on the fact that media items or selections of a playlist

are *necessarily arranged in a sequential order* and will be played in that order *unless the user directs the software to play the playlist in some other order.* (See, e.g., Ex. 2007 at ¶58.)

In particular, a user may choose to play the items in a playlist in the original order in which they are presented, or alternatively, the user may choose to play the items randomly. (See, e.g., Ex. 1001 at 1:48-53.) Whether the selections are played randomly or in the original order in which they are presented in the playlist, it is clear that in all cases, the playlist is a list referencing media items that are arranged to be played in a sequence.

For example, the '099 Patent states:

The sharing of playlists is also known. Popular file sharing programs, such as Kazaa (a trademark of Sharman Networks), facilitate the sharing of playlists. Using such systems, it is possible for a user to download a list of songs or movies that another individual has compiled. This list may then be used to *make or modify a playlist* for the user.

(Ex. 1001 at 1:64-2:2 (emphasis added).) The above passage distinguishes a “list of songs” from a “playlist.” It further distinguishes compiling a list of songs from compiling a playlist.

The Petitioner’s Declarant (Dr. Almeroth) alleges that “[t]he specification and the claims thus describe playing songs selected from a playlist, rather than

playing all of the songs on a playlist.” (Ex. 1006 at ¶ 20.) Petitioner’s Declarant then alleges that “[t]his is contrary to the concept that the playlist be arranged to be played in a sequence.” (*Id.*)

The recitation in the ‘099 specification that a user may select an item from a playlist to be played is not inconsistent with the concept that a playlist refers to a “list referencing media items arranged to be played in sequence.” In particular, a user may listen to the media items as they are arranged in the playlist, or alternatively, the user may select an item from the playlist for playback by a media player.

In fact, the ‘099 Patent explicitly states: “Playlists also facilitate the playing of a plurality of selections in a particular sequence. That is, the playlist may be compiled in an order in which the playing of selections therefrom is desired.” (Ex. 1001 at 1:48-1:51.)

Further, the ‘099 Patent discloses:

“The present invention provides the ability for non-computer devices to display and play playlists from a central computer running on the Internet.”

(Ex. 1001 at 10:61-63.) One of ordinary skill in the art would have understood that to play a playlist meant to play the entire playlist in sequence.

The Loy Declaration confirms that one of ordinary skill in the art will understand that to play a playlist means to play the entire playlist in sequence. (Ex. 2007 at ¶ 54.)

Thus, the assertion of Petitioner's Declarant that the selection of an item from a playlist for playback is "contrary to the concept that the playlist be arranged to be played in a sequence" is plainly inconsistent with the explicit teachings of the '099 Patent. (Ex. 1006 at ¶ 36.) As a claim term must be construed in the context of the specification as it would be understood by one of ordinary skill in the art, the assertion of the Petitioner's Declarant must be rejected. *Phillips*, 415 F.3d at 1313; *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Other passages of the '099 Patent further corroborate the Patent Owner's proposed construction for the term "playlist."

For example, the '099 Patent recites:

Playlists are typically compiled by reviewing a list of selections available for play and then choosing those selections that the user would like to have on the playlist. Thus, a user may review songs that are stored on a personal computer's hard drive and *compile a playlist* therefrom, for example.

(Ex. 1001 at 1:54-56 (emphasis added).) The above passage makes clear that a playlist is distinct from a "list of selections available for play." In particular, a user can *compile* a playlist by choosing those selections that the user would like to have on the playlist.

As noted in the Loy Declaration, in the time frame of the ‘099 Patent, it was well known to one of ordinary skill in the art that compiling a playlist meant arranging a list of songs such that the songs can be played in a sequential order. (Ex. 2007 at ¶ 48.)

The ‘099 Patent also states:

“The present invention provides the ability for non-computer devices to display and play playlists from a central computer running on the Internet.”

(Ex. 1001 at 10:61-63.) As stated in the Loy Declaration, one of ordinary skill in the art will understand that to play a playlist means to play the entire playlist in sequence. (Ex. 2007 at ¶ 54.)

Patent Owner further notes that U.S. Published Patent Application 2002/0072817 to Champion (“Champion”), which is cited by Petitioner, confirms that one of ordinary skill in the art would understand a playlist as having a specified order. Specifically, Champion discloses that “... the user may want to create a listing of several audio files to be retrieved and output in a *specified order*, i.e., a *play-list*.” (Ex. 1004 at ¶0044 (emphasis added).)

For the foregoing reasons, the Patent Owner respectfully requests that the Board adopt the Patent Owner’s construction of the term playlist as “a list

referencing media items arranged to be played in a sequence” as the broadest reasonable construction of that term in view of the specification of the ‘099 Patent.

4. “A wireless handheld remote control which is associated with and separate from the media player device.”

The phrase “a wireless handheld remote control which is associated with and separate from the media player device” appears in Independent Claims 10, 11, and 12.

Patent Owner proposes that “a wireless handheld remote control which is associated with and separate from the media player device” be construed as “a handheld remote control that can operate as an *independent* device relative to the media player that it controls.”

The Specification of the ‘099 Patent and the language of the claims themselves support this construction. Specifically, each of Claims 10, 11, and 12 recites both “remote” and “separate” to qualify the handheld control device and its relationship relative to the media player device. The term “remote” conveys a physical separation between the handheld device and the media player device.

Accordingly, the term “separate” should be construed to have a meaning that is not limited by only physical separation. Rather, as discussed in more detail below, the term “separate” should be construed to mean that the handheld remote control can operate independently of the media player device. *See, e.g., Phillips,*

415 F.3d at 1314 (“Quite apart from the written description and the prosecution history, the claims themselves provide substantial guidance as to the meaning of particular claim terms.”).

The specification of the ‘099 Patent makes clear that in certain embodiments the remote control can receive playlists from a remote source via a network (*e.g.*, the Internet) without any reliance on the media player device. (*See, e.g.*, Ex. 1001 at Figs. 2 and 5.) For example, the ‘099 Patent states:

Referring now to FIG. 2, rather than communicating a playlist to the dedicated media player 17, the playlist may alternatively be communicated to a remote control 18 for the dedicated media player. (Ex. 1001 at 9:1-4.)

The ‘099 Patent further states:

The *user’s device* may be, for example, the dedicated media player 17 of FIGS. 1 and 2, or may *alternatively be the remote control 18* of FIG. 2. (Ex. 1001 at 9:20-27 (emphasis added).)

The above passages indicate that the remote control 18 itself, rather than the media player 17, can be the user’s device. Hence, the specification of the ‘099 Patent makes clear that the handheld remote control can function independently of the media player device.

VII. SUMMARY OF ALLEGED PRIOR ART

1. U.S. Patent No. 2002/0087996 to Bi (“Bi”)

Bi discloses a “system for interactive remote control wired or wireless, of an audio or video playback application running on a personal computer or other computing platform.” (Ex. 1003 at Abstract.) As depicted in Figure 1 of Bi, reproduced below, Bi’s system includes a computing platform 100 and an interactive remote control device, referred to as navigator 260. (*Id.* at ¶ 0018.) An audio or video player application 151 running on the computing platform 100 is “configured to receive digital audio or video data 103 from local storage device 112 on the computing platform 100 or from a data server 102 connected to the computing platform 100 by the Internet or other computer network 101.” (*Id.*)

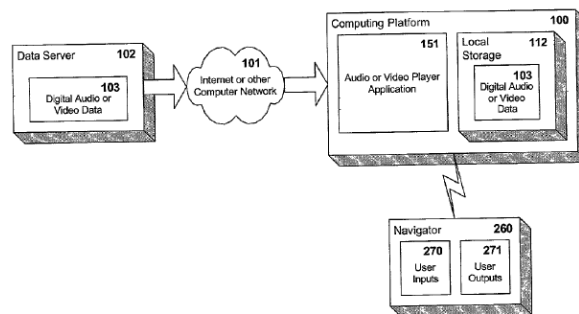


Figure 1

The navigator 260 acts as a remote control and allows the user to provide input to and receive feedback from, the audio or video application 151 running on the computing platform 100. (*Id.* at ¶ 0028.) As shown in FIG. 3, reproduced

below, the “audio or video player application 151 running on the computing platform 100 may interact with the navigator 260 through a wireless data communications interface 124 on the computing platform 100.” (*Id.* at ¶ 0020.)

“On the navigator 260, communication with the navigator control manager 154 running on the computing platform 100 is handled through a wireless data communications interface 269 on the navigator 260.” (*Id.*) Bi discloses that “[t]his wireless data communications interface 269 must be compatible with the wireless data communications interface 124 on the computing platform 100.” (*Id.*) “The wireless communications interfaces 124 and 269 may be standard interfaces, such as Home RF, IEEE, 802.11 or Bluetooth.” (*Id.*)

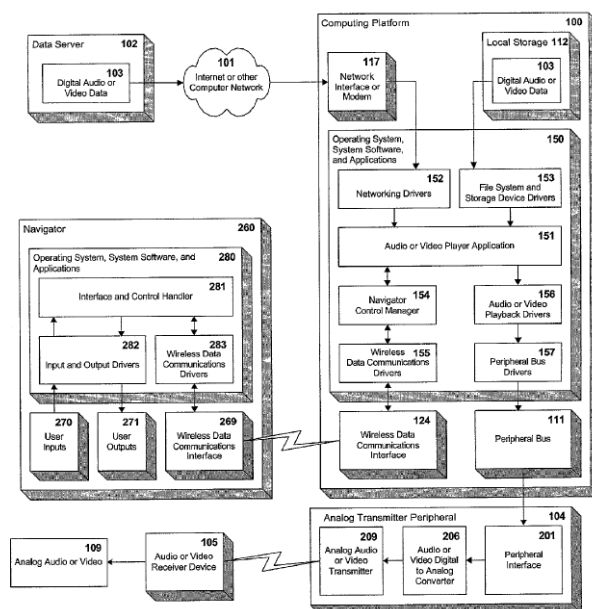


Figure 3

As shown in Figure 7, reproduced below, the user can use the navigator 260 to send one of the following commands to the computing platform 100: (1) “play a music file,” “download music file(s),” “buy music file,” and “browse music,” “update software,” and “system start up.” (*Id.* at Fig. 7.)

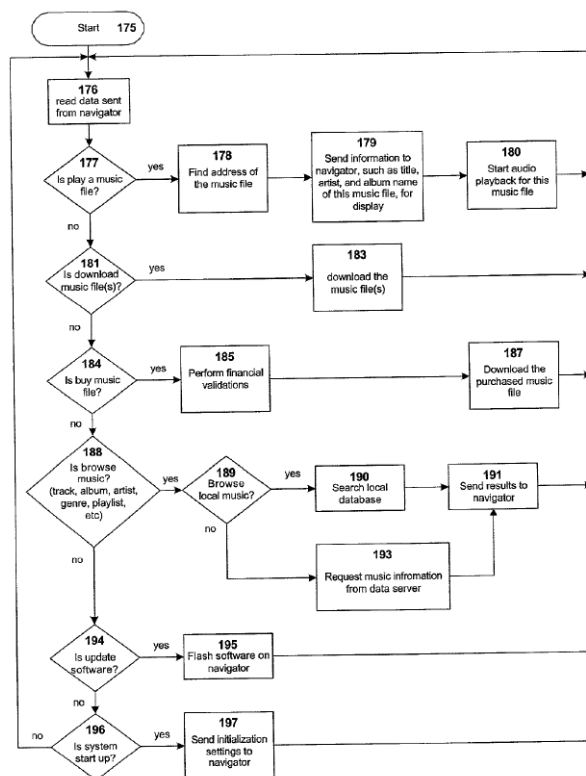


Figure 7

A navigator control manager 154, which runs on the computing platform 100 and may be part of the audio or video player application 151, receives user inputs from the navigator 260 and interprets the received user inputs into commands and actions for the audio or video player application 151. (*Id.* at ¶¶ 0019; 0031.) The navigator control manager 154 provides the results from the

commands and actions of the audio or video player application 151 as user outputs to the user on the navigator 260. (*Id.* at 0031.)

If the navigator control manager 154 receives a “play a music file” command 177, it finds “address of the music file” 178 and then it sends “information to navigator, such as title, artist, and album name of this music file, for display” 179, and then it starts step 180 of “audio playback for this music file.” (*Id.* at ¶ 0032.) When the navigator control manager 154 receives a “browse music” command 188, if the received command is a command to “browse local music;” it searches the local database 190 and then sends results to navigator 191; and if the “browse music” command is not a “browse local music,” the navigator control manager requests for music information from data server 193 and then sends the results to the navigator 260. (*Id.*)

2. U.S. Patent Application Publication No. 2002/0072817 to Champion (“Champion”)

Champion is generally directed to “. . . a system and method for requesting, obtaining and using multimedia files or data streams for audio and audiovisual entertainment on a home entertainment system” (Ex. 1004 at ¶ 0001.) FIG. 1 of Champion, reproduced below, depicts such a system that “includes a computer (102) which is connected to the Internet (101).” (*Id.* at ¶ 0030.) The computer (102) can download audio or audiovisual data files that are available on the

Internet. (*Id.*) Further, the computer (102) can access streams of audio or audiovisual data that are transmitted over the Internet (101). *Id.* The computer (102) has a digital connection (106) to a number of speakers (103). (*Id.* at ¶ 0031.)

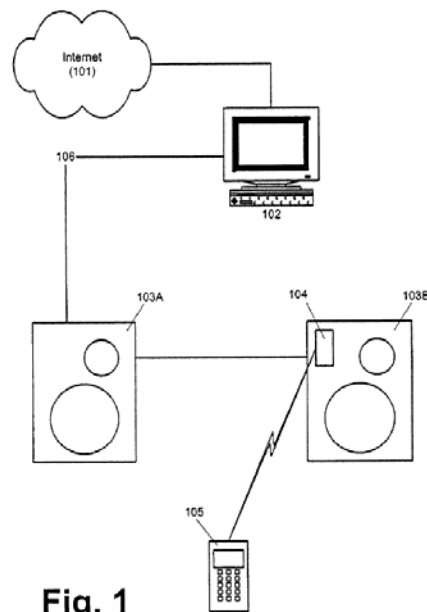


Fig. 1

The system further “includes a remote control unit (105) which communicates wirelessly with a wireless transceiver (104) which is located in each speaker or pair of speakers (103).” (*Id.* at ¶ 0039.) The remote control unit (105) “can be used to control the audio programming output by the computer (102) to the speakers (103).” (*Id.* at ¶ 0040.) FIG. 3 of Champion, which is reproduced below, provides a more detailed view of the remote control unit (105).

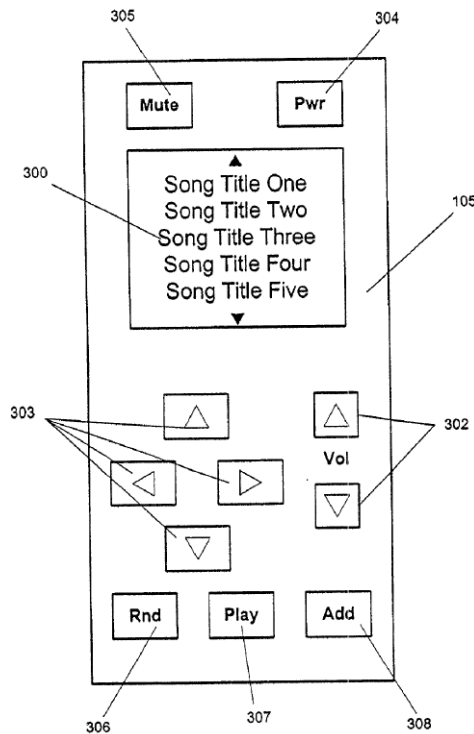


Fig. 3

“As shown in FIG. 3, the remote control unit (105) preferably includes a display device (300), such as a liquid crystal display (LCD), on which information received from the computer (102) can be displayed.” (*Id.* at ¶ 0042.) The display (300) “may be used to display, for example, a listing of available audio files, *e.g.*, song titles, that can be retrieved by the computer (102) and output through the speakers (103).” (*Id.*) Alternatively, the display (300) may be used to display “a listing of on-line radio stations or other streaming audio sources from which the computer (102) can receiving [sic] streaming audio over the Internet (101).” (*Id.*)

“In the remote control unit (105) of FIG. 3, a group of four buttons (303) is preferably provided for moving a cursor or highlight bar over the display (300).”

(*Id.* at ¶ 0043.) “In the listing shown in group (303) could be used to move a cursor or highlight up and down through the listing of audio files on the display (300).” (*Id.*) “When a desired audio file or audio data stream is indicated by the cursor, the user can preferably press a ‘play’ key (307) to have that audio file or audio stream sent to the speakers (103) by the computer (102).” (*Id.*)

“Additionally, the user may want to create a listing of several audio files to be retrieved and output in a specified order, i.e., a play-list.” (*Id.* at ¶ 0044.)

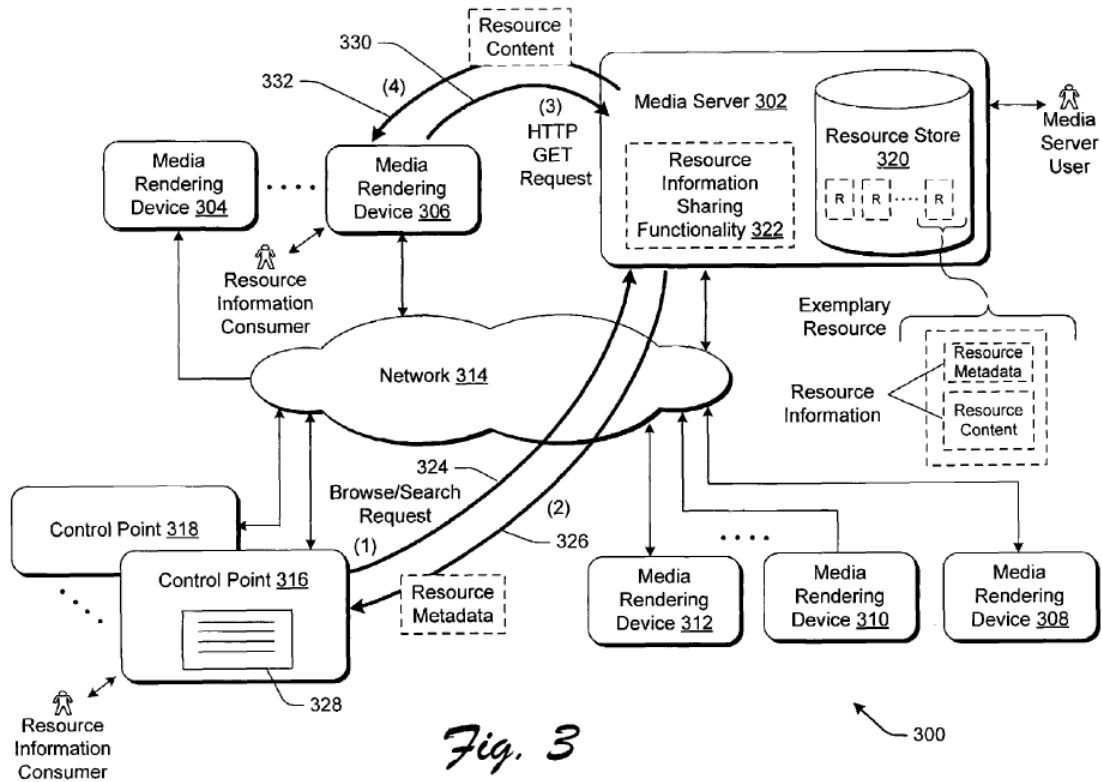
“Accordingly, the user can create such a play-list with the system of the present invention by using the four buttons (303), or an equivalent device, to indicate an audio file from the listing on the display (300) and pressing the ‘add’ key (308) to add that file to the play-list.” (*Id.*) “When the user has successively added all the desired files to the list, the user can press the “play” key to play the list.” (*Id.*)

“The audio files are preferably retrieved and output in the same order that were designated in the play-list.” (*Id.*) “Alternatively, the computer (102) may be instructed to output by files in a random order by actuation of the ‘random’ key (306) on the remote control (105).” (*Id.*) “Once the play-list is playing, the user may use, for example, the left and right buttons of the button group (303) to skip through or repeat songs from the play-list.” (*Id.*)

3. U.S. Patent No. 7,668,939 to Encarnacion (“Encarnacion”)

Encarnacion is directed to “[a] media server in a Universal Plug and Play (UPnP) network” that “includes a resource sharing service to govern the distribution of resource information regarding resources to rendering devices.” (Ex. 1005 at Abstract.) “In one case, the resource sharing device consults a criterion to determine whether an identified network device is authorized to receive resource information.” (*Id.*) “In another case, the resource sharing service consults another criterion to determine whether a specified individual associated with the media server must consent to the transfer of the resource information in order for the transfer to occur.” (*Id.*)

FIG. 3 of Encarnacion, reproduced below, depicts a network architecture 300 that includes a plurality of UPnP devices (302-312) that are coupled together via a UPnP network 314. (*Id.* at 7:65-8:2.)



“The devices (302-312) include the above-mentioned media server 302 and a plurality of media rendering devices (304-312).” (*Id.* at 8:2-4.) “The UPnP network 314 also optionally includes one or more control points (316,318).” (*Id.* at 8:14-15.) The control points can be integrated with one of the UPnP devices. (*Id.* at 8:15-17.) For example, “a rendering device can also include control point functionality for interacting with the media server 302.” (*Id.* at 8: 17-19.)

“Alternatively, one or more control points can be implemented separate from the UPnP device (302-312).” (*Id.* at 8:19-21.) “The UPnP network 314 can use any combination of protocols to transfer information between the UPnP devices (302-

312, 316 and 318), such as TCP/IP, SOAP, GENA, HTTP, and so on.” (*Id.* at 8:29-32.)

A consumer can use a control point (such as control point 316) or other device to investigate the resource information corresponding to resources provided in the resource store 320 of the media server 302. (*Id.* at 8:55-58.) “For instance, this operation may entail investigating the resource metadata of the resources, such as the titles of available resources, and other high level information regarding the resources.” (*Id.* at 8:58-62.) “After such investigation, the consumer can select resource content associated with a resource for presentation at a selected rendering device, such as the media rendering device 306.” (*Id.* at 8:62-65.) The control point 316 can then “provide a role in setting up the transfer of the resource content from the media server 302 to the selected rendering device 306.” (*Id.* at 8:66-67.) “In one implementation, the UPnP architecture 300 uses a non-UPnP protocol to actually execute the transfer of resource content from the media server 302 to the render device 306, such as, but not limited to, the HTTP protocol.” (*Id.* at 8:67-9:4.)

For example, “a consumer can use control point (such as control point 316) to send a UPnP query to the media server 302. The UPnP query can be structured as a browse request or a search request. In a browse request, the consumer’s intent is to scan a collection of resource metadata associated with the resources provided

by the media server 302. In a search request, the consumer's intent is more targeted, *e.g.*, to find specific resource metadata provided by the media server 302 identified by various search terms, etc.” (*Id.* at 37:9-17.) The media server 302 responds “by presenting resource metadata associated with one or more resources (*e.g.*, files in the resource store 320) that meet the consumer's request.” (*Id.* at 37:19-21.) The resource metadata can include “various high level information pertaining to the matching resources, such as title, genre, artist, date created, and so on.” (*Id.* at 37:21-24.) The resource metadata “can also include resource locators (such as URLs) that identify the respective network locations from which the resource content items can be retrieved from.” (*Id.* at 37: 24-27.)

After viewing the resource metadata, “the consumer selects a corresponding resource content item to be played on a rendering device, such as rendering device 306.” (*Id.* at 37:36-38.) The consumer “enables the rendering device 306 to transmit a request to the media server 302 that instructs the media server 302 to retrieve the selected resource content item.” (*Id.* at 37:39-42.) For example, the consumer can transfer the URL associated with the selected resource to the rendering device 306. (*Id.* at 37:42-45.) The rendering device 306 responds by transmitting an HTTP GET request to the media server 302, where the HTTP GET request includes the URL corresponding to the selected resource content, which was passed to the rendering device by the control point. (*Id.* at 37:46-49.) The

media server 302 responds to the HTTP GET request by retrieving the selected resource content item at the location specified by the URL, and provides the selected resource content item to the rendering device 306. (*Id.* at 37:50-54.)

VIII. LEGAL STANDARDS

A. The Law of Anticipation

To anticipate a claim, a single prior art reference must expressly or inherently disclose each claim limitation. *Celeritas Techs., Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998). But disclosure of each element is not quite enough. “Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983) (citing *Soundsciber Corp. v. United States*, 175 Ct. Cl. 644, 360 F.2d 954, 960 (1966) (emphasis added)). The prior art references must be analyzed as a skilled artisan would. *See Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991) (stating that, to anticipate, “[t]here must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention”).

B. The Law of Obviousness

“Obviousness requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim under

examination.” *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2004) (citing *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)); MPEP § 2141 (8th Ed., Rev. 9, August 2012). “Rather, obviousness requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention.” *Id.* (citing *KSR*, 550 U.S. at 421). In *KSR*, the Supreme Court explained that “because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known,” it is important to identify a reason that would have prompted a person of ordinary skill to combine the prior art elements in the way claimed in the challenged patent. *KSR*, 550 U.S. at 418-19.

IX. ARGUMENTS

A. There Is No Reasonable Likelihood That Claims 10-12 Are Obvious In View Of Combination Of Bi, Champion And Encarnacion

The Petitioner alleges that “one skilled in the art would have combined the features of these three references because the navigator disclosed in Bi and the remote control in Champion could each be used as a control point in the Encarnacion system, and because the remote control in Champion could be used as the navigator in Bi.” (Paper 1 at 21.) Even if one were to accept the Petitioner’s

statement that “the navigator disclosed in Bi and the remote control in Champion could each be used as a control point in the Encarnacion system” as factually correct (which the Patent Owner contends it is not, as discussed below), the Petitioner still fails to articulate a reason as to *why* one would combine these references, or how the combination of these references would provide the claimed invention. *See* KSR, 550 U.S. at 418-419 (explaining that it is important to identify a reason that would have prompted a person of ordinary skill to combine the prior art elements in the way claimed in the challenged patent). For example, if one were to accept, *arguendo*, the Petitioner’s allegation that the navigator in Bi could be used as a control point in the Encarnacion system, the Petitioner still has failed to explain why one of ordinary skill would want to use the navigator in Bi in the system of Encarnacion.

Rather, the Petitioner appears to use the ‘099 Patent itself as a roadmap to pick and choose disparate elements of the Bi, Champion and Encarnacion references to allege that the combination of these references would render the Challenged Claims obvious. This is precisely the type of hindsight analysis that is prohibited by KSR and its progeny. *See* KSR, 550 U.S. at 421 (“A factfinder should be aware...of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning.”); *see also* “*ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694 F.3d 1312, 1327 (Fed. Cir. 2012) (“[T]he

expert's testimony on obviousness was essentially a conclusory statement that a person of ordinary skill in the art would have known, based on the 'modular' nature of the claimed components, how to combine any of a number of references to achieve the claimed inventions. This is not sufficient and is fraught with hindsight bias.").

The Petitioner alleges that "[b]oth the navigator in Bi and the remote control in Champion have all of the required functionality for a control point in Encarnacion, namely, the ability to connect to a network to communicate with other devices, a display for browsing media items available on the network, and buttons to allow for user input and selection of media items" (Paper 1 at 21.) The Petitioner's allegation is not supported by and is contrary to Bi's disclosure. Specifically, the navigator 260 in Bi is not capable of directly communicating with a media server, such as the data server 102. Rather, in Bi, it is the computing platform 100 that communicates with the data server 102 via Internet or other computer network. (*See, e.g.*, Ex. 1003 at Fig. 3.) In fact, the navigator 260 in Bi is an extension of the computing platform 100, and is not capable of independent communication with other devices.

Moreover, Encarnacion discloses that the control points in a UPnP network architecture "define agents that can discover and control other UPnP devices." (Ex. 1005 at 2:12-14.) There is no indication whatsoever in Bi that the navigator

260 is capable of discovering other devices. Rather, as indicated above, the navigator 260 can only communicate with the computing platform 100. (*See, e.g.*, Ex. 1003 at ¶0028).

As such, the Petitioner's allegation that the navigator in Bi has "all of the required functionality for a control point in Encarnacion" is contradicted by Bi.

Similarly, the remote control unit 105 in Champion is not capable of communicating directly with the Internet or servers on the Internet. Rather, the control unit 105 can only communicate with the computer 102 via the speakers 103. Specifically, the control unit 105 communicates wirelessly, using preferably infrared signaling, with a wireless transceiver 104, which is located in each speaker or pair of speakers 103. (Ex. 1004 at ¶ 0039.) The speakers (103) in turn communicate with the computer 102 or the audio server 190 using the digital connection 106, which can be, for example, a universal serial bus (USB) or a firewire connection. (*See id.* at ¶¶ 0031, 0032; Figs. 1 and 5a.)

Thus, as in Bi, there is no indication in Champion that the control unit 105 has "all of the required functionality for a control point in Encarnacion," as alleged by Petitioner and Petitioner's Declarant.

The Petitioner further alleges that "... one of skill in the art would recognize that the remote control in Champion could be used as the navigator in Bi because the remote control can wirelessly communicate with a computing platform, display

the results of the browse command and allow the user to select an item to be played on computing platform 100.” (Paper 1 at 21-22.)

Again, the Petitioner’s allegation is not supported by Champion and Bi. In particular, as discussed above, Champion’s remote control 105 does not directly communicate with the computer 102. Rather, the remote control 105 communicates with the computer 102 via the speakers 103. (*See, e.g.*, Ex. 1004 at ¶¶ 0031, 0032.) In contrast, the navigator 260 in Bi communicates directly with the computing platform 100, via wireless data communications interfaces 269 and 124, running on the navigator 260 and the computing platform 100, respectively. (*See, e.g.*, Ex. 1003 at ¶ 0020.)

The Petitioner’s Declarant states that “[a] person of ordinary skill in the art who wanted to implement the system disclosed in Bi or Champion would readily look to industry standards, such a UPnP to assist in the implementation.” (Ex. 1006 at ¶ 58.) The Petitioner’s Declarant alleges that “[t]his would allow the person of skill in the art to save time and effort in the implementation and may also allow a device to be interoperable with other devices based on the same standard.” (*Id.*) Specifically, the Petitioner’s Declarant alleges that “a person of skill in the art attempting to implement the system in Bi or Champion would look to the UPnP standard and the Encarnacion patent since the UPnP standard was widely supported industry standard for media sharing on a network.” (*Id.*)

The Petitioner's Declarant, however, does not explain how the implementation of Bi based on the UPnP standard would have saved time and effort. Moreover, even if one were to accept, *arguendo*, that the use of the UPnP standard in Bi would have saved time and effort (an allegation for which the Petitioner's Declarant provides no support), the Petitioner provides no reason why one of ordinary skill in the art would have implemented as a control point the navigator 260 in Bi, rather than the computing platform 100. In other words, even if one were to assume, *arguendo*, that it would have been feasible to use the UPnP standard in Bi and one of ordinary skill would have been motivated to do so, one of ordinary skill could have chosen the computing platform 100, instead of the navigator 260, as a control point, especially in view of the ability of the computing platform 100 to communicate with the data server 102, and Encarnacion's disclosure that "...a rendering device can also include control point functionality for interacting with the media server 302" (Ex. 1005 at 8:17-19.)

The Petitioner further alleges that "the protocols for communicating playlists between the media server and the control point disclosed in Encarnacion could be used for the communication between the computing platform and the navigator in the Bi system, or for the communication between the computer and remote control in the Champion system." (Paper 1 at 22.) The Petitioner's Declarant opines that "... to implement the 'browse' command in Bi a person of ordinary skill in the art

would look to Encarnacion because it discloses how to implement a ‘Browse’ command in UPnP.” (Ex. 1006 at ¶58.) Specifically, the Petitioner’s Declarant alleges that “... Encarnacion discloses that a media server responding to ‘browse’ command sent by a control point sends an XML file to the control point. Furthermore, Encarnacion discloses that this XML file can contain ‘resource containers’ such as playlists.” (*Id.*)

The Petitioner’s Declarant, however, does not articulate a reason as to why one of ordinary skill would have chosen the XML format for sending the browse results in Bi from the computing platform 100 to the navigator 260. The Petitioner’s naked assertion that the XML protocol “could readily be used by the computing platform in Bi when it responds to a browse command from the navigator,” is not sufficient to support Petitioner’s allegation that one of ordinary skill would have used that protocol in Bi to send the browse results from the computing platform 100 to the navigator 260. (Paper 1 at 22.)

In particular, the Petitioner does not point to any attribute of the browse results in Bi, *e.g.*, the form of the browse results, that would have motivated one of ordinary skill in the art to use the XML protocol for sending those browse results to the navigator 260. In fact, Bi does not disclose any specific format for the browse results. In particular, there is no indication in Bi that the browse results are

in the form of a playlist. Rather, Bi uses the generic term “music information” and “results” to describe the browse results. (Ex. 1003 at ¶ 0032.)

Nor does the Petitioner or the Petitioner’s Declarant explain why the architecture of the navigator 260 would be capable of supporting receiving the browse results in an XML format.

Petitioner further alleges that “[e]ach of Bi, Champion and Encarnacion describes a wireless handheld remote control receiving a playlist from a remote source.” (Paper 1 at 34.) The Petitioner has not, however, met its burden to show that this allegation is in fact supported by the teachings of these references.

In particular, as discussed in more detail below, there is no indication in Bi that the “browse results” are in the form of a playlist. Rather, Bi uses the generic term “music information” and “results” to describe the browse results. (*See, e.g.*, Ex. 1003 at ¶ 0032.) Further, the portion of Bi to which the Petitioner refers, which indicates that the criteria for browse of music can be based on playlists, does not teach that the navigator 260 receives the browse results as a playlist. (Paper 1 at 34 (citing Bi at ¶ 0032).) The criterion for browsing music is distinct from the form of the respective browse results. As discussed in the Loy Declaration, one of ordinary skill in the art would have understood that the “music information” resulting from a browse music command could be sent from the data server 102 to the computing platform 100 in a variety of different forms. (Ex. 2007 at ¶ 112.)

For example, the “music information” can be in the form of album art, liner notes, concert reviews, advertising, etc. (*Id.*)

Moreover, Champion does not disclose that its remote control unit (105) *receives* a playlist. Rather, Champion discloses that a user can employ the control unit (105) to *create* playlist. (*See, e.g.*, Ex. 1004 at ¶ 0044.)

The Petitioner cites to Encarnacion’s disclosure that “a particular kind of resource collection is a resource playlist” in support of its allegation that Encarnacion discloses that the control point receives a playlist from the media server. (Paper 1 at 35 (citing Encarnacion, Ex. 1005 at 6:43-46).) This disclosure in Encarnacion does not, however, indicate that a user receives a playlist on the control point. Encarnacion discloses that the resource metadata for each resource can include “a resource locator that describes where that resource content can be found (so that it can be subsequently retrieved).” (Ex. 1005 at 14:9-12). For example, a “playlist resource container can have a resource locator associated therewith.” (Ex. 1005 at 14:15-16.) Encarnacion further discloses that “[t]his resource locator can be used to retrieve either the playlist (e.g., a list of songs) or each of the songs in the playlist (e.g., the set of songs “concatenated”).” (Ex. 1005 at 14:16-21). A control point can supply such a resource locator to a rendering device, which can in turn submit this resource locator to the media server 302. (*See, e.g.*, Ex. 1005 at 14:36-44.) The media server uses the resource locator it has

received from the rendering device to locate the selected resource content and to present this resource content to the rendering device. (Ex. 1005 at 14:44-47.)

Hence, Encarnacion describes that a control point may receive information regarding the location (*e.g.*, a URL) of where a playlist can be found. The Petitioner has failed to point to any disclosure in Encarnacion that the control point in fact receives a playlist from the media server, let alone displaying that playlist to a user such that the user is enabled to select at least one item from the playlist.

Accordingly, the Petitioner has failed to show a reasonable likelihood that the combined teachings of Bi, Champion and Encarnacion would render obvious any of Claims 10, 11, or 12.

B. There Is No Reasonable Likelihood That Claim 10 Is Anticipated By Bi

The navigator 260 in Bi does not receive a playlist from the computing platform 100. Specifically, there is no indication in Bi that the “browse results” are arranged as a list referencing media items (*e.g.*, songs) to be played in a sequence. Further, Bi does not teach presenting a playlist to a user on the navigator 260.

The Loy Declaration explains that the navigator 260 in Bi does not receive a playlist from the computing platform 100, nor does Bi teach presenting a playlist to a user on the navigator 260. (Ex. 2007 at ¶ 131.)

Notwithstanding, the Petitioner alleges that “Bi discloses that Navigator 260 (wireless handheld remote control) receives the results of a browse command, which includes playlists, from data server 102 (a remote source).” (Paper 1 at 55.)

Bi does not, however, teach or suggest that the results of the browse command are in the form of playlists. As discussed above, FIG. 7 of Bi shows that one of the commands that the navigator 260 can send to the computing platform 100 is a “browse music” command. Bi further states that “a browse of music is based on such criteria as music track, album, artist, music genre, and playlists.” (Ex. 1003 at ¶ 0032.) Bi discloses that “[if] the music to browse is not local to the computing platform 100, then the navigator control manager 154 [which runs on the computing platform 100] requests *music information* from the data server 102 in step 193 and sends the results of the local music browse to the navigator 260 in step 191.” (*Id.* at ¶ 0032 (emphasis added).) The Patent Owner notes that there appears to be a typographical error in this statement in that Bi probably intended to indicate the results that are sent to the navigator 260 are from the data server 102, and not the results of the local music browse. Notwithstanding, Bi does not indicate that the *music information* is in the form of a playlist. Rather, Bi uses the generic term “music information” and “results” to describe the browse results. Nor is there any inherent reason that the music information sent by the data server 102 to the computing platform 100 must necessarily be in the form of a playlist. In

particular, the disclosure in Bi that the criteria for browse of music can be based on playlists (*Id.* at ¶ 0032) does not necessarily lead to the conclusion that the browse results are in the form of a playlist. The criterion for browse of music is distinct from the form of the respective browse results. Bi is simply silent on the form of the browse results. *See, e.g., Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010) (citing *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (“Inherent anticipation requires that the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art.”)).

As discussed in the Loy Declaration, one of ordinary skill in the art would have understood that the “music information” resulting from a browse music command could be sent from the data server 102 to the computing platform 100 in a variety of different forms. (Ex. 2007 at ¶ 112.) For example, the “music information” can be in the form of album art, liner notes, concert reviews, advertising, etc. (*Id.*)

Further, Claim 10 recites that the “media player device is associated with and separate from the wireless handheld remote control.” That is, the handheld remote control is capable of functioning independently of the media player device.

The Loy Declaration explains that the navigator 260 is merely an extension of the computing platform 100 and is not capable of functioning independently of the computing platform 100. (Ex. 2007 at ¶ 101.)

Accordingly, the Petitioner has failed to demonstrate a reasonable likelihood that Claim 10 is anticipated by Bi.

C. There Is No Reasonable Likelihood That Claim 11 Is Anticipated By Bi

Bi does not disclose “receiving, at a media player device, a playlist from a remote source,” as recited in Claim 11.

Bi discloses, with reference to its FIG. 7, that “[i]f the music to browse is not local to the computing platform 100, then the navigator control manager 154 requests music information from the data server 102 in step 193.” (Ex. 1003 at ¶ 0032.) Bi further states that “[t]ypically, a browse of music is based on such criteria as music track, album, artist, music genre, and playlists.” (*Id.*)

Bi, however, does not teach that the computing platform 100 receives the music information from the data server 102 in the form of a playlist, *i.e.*, a list referencing media items arranged to be played in a sequence. For example, as discussed above, with respect to “browse results,” Bi is simply silent regarding the format by which the browse results are communicated from the data server 102 to the computing platform 100. Nor is there any reason to believe that the browse results must be communicated from the data server 102 to the computing platform 100 in the form a playlist.

The Loy Declaration explains that there is no reason to believe that the browse results in Bi are communicated from the data server 102 to the computing platform 100 in the form of a playlist. (Ex. 2007 at ¶ 115.)

Even if one were to assume, *arguendo*, that the computing platform 100 sends the browse results to the navigator 260 in the form of a playlist (which Bi does not teach), one cannot conclude that the data server 102 sends the music information to the computing platform 100 in the form of a playlist. For example, the computing platform 100 could receive music information that is not arranged to be played in a sequence, and then compile that information in the form of a playlist (again, Patent Owner emphasizes that there is no indication in Figure 7 of Bi (Ex. 1003) and the associated description that the computing platform compiles playlists).

Moreover, as discussed above in connection with Claim 10, Bi does not disclose that the computing platform 100 communicates the browse results in the form of a playlist to the navigator 260. In addition, there is no indication in Bi that the navigator 260 presents the browse results as a playlist to a user.

Accordingly, Patent Owner respectfully contends that Bi fails to anticipate Claim 11.

D. There Is No Reasonable Likelihood That Claim 12 Is Anticipated By Bi

As discussed above, Bi does not disclose that the computing platform 100 receives the browse results from the data server 102 in the form of a playlist, *i.e.*, as a list of media items arranged to be played in a sequence. Further, Bi does not disclose that the computing platform 100 communicates the browse results in the form of a playlist to the navigator 260. In addition, there is no indication in Bi that the navigator 260 presents the browse results as a playlist to a user.

Accordingly, Bi fails to anticipate Claim 12.

X. The Board Should Not Institute Review Based on the Petition's Redundant Grounds

Part 42 of Title 37, Code of Federal Regulations, governs proceedings before the Board and 37 C.F.R. § 42.1(b) provides that “[t]his part shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” In the case of *Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.*, CBM2012-00003, Paper 7 (Oct. 25, 2012), the Board addressed the issue of redundancy:

When promulgating the regulations, the Board considered “the effect of the regulations on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings” as mandated by 35 U.S.C. § 326(b). Conducting a proceeding contrary to those statutory considerations

would frustrate Congressional intent. We take this opportunity to note that multiple grounds, which are presented in a redundant manner by a petitioner who makes no meaningful distinction between them, are contrary to the regulatory and statutory mandates, and therefore are not all entitled to consideration. . . . A petitioner has the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20(c).

CBM2012-00003, Paper 7 at 2.

In *Oracle Corp. v. Clouding IP, LLC*, the Board explained that “the proper focus of a redundancy designation is not on whether the applied prior art disclosures have differences, for it is rarely the case that the disclosures of different prior art references will be literally identical.” IPR2013-00088, Paper 13 (June 13, 2013) (hereinafter *Oracle*). Rather, “the focus is on whether Petitioner articulated a meaningful distinction in terms of relative strengths and weaknesses with respect to application of the references’ disclosures to one or more claim limitations.” (*Id.*)

A. The Obviousness Ground Based On Combination Of Bi, Champion and Encarnacion Is Vertically Redundant Relative To Anticipation Ground Based On Bi

The Petitioner alleges that the combination of Bi, Champion and Encarnacion renders obvious each of the challenged claims, and further alleges that

each of the challenged claims is anticipated by Bi. (Paper 1 at 20, 52.) These grounds are vertically redundant for the following reasons.

In the *Liberty Mutual* case, the Board defined vertical redundancy as follows:

Vertical redundancy exists when there is assertion of an additional prior art reference to support another ground of unpatentability when a base ground already has been asserted against the same claim without the additional reference and the Petitioner has not explained what are the relative strength and weakness of each ground. To move forward with such a multiplicity of grounds, Petitioner must articulate a reasonable basis to believe that from a certain perspective the base ground is stronger, and that from another perspective the ground with additional reference is stronger.

CBM2012-00003, Paper 7 at 11.

In *Oracle*, the Board ruled that an obviousness ground based on a combination of two references was redundant relative to an anticipation ground based on one of those references. (IPR2013-00088, Paper 13, at 3.) The Board in *Oracle* indicated that the petitioner had failed to explain why one reference was more preferred for satisfying some elements while the other reference was more preferred for satisfying some other elements. *Id.*

Similar to *Oracle*, the Petitioner in the present case has not articulated any meaningful distinction in the potential strength and weakness of the applied art.

The Petitioner states that “... the prior art combination set forth in Ground 1 includes additional and more robust disclosure than the Bi publication alone, on a number of elements recited in the challenged claims.” (Paper 1 at 19.) For example, the Petitioner asserts that “Champion publication presents a more robust disclosure of a wireless handheld remote control that presents a playlist to a user, and enables the user to select an item to be played using the remote control, as recited in the challenged claims.” (*Id.*) Further, the Petitioner states that the “Encarnacion patent provides a more robust disclosure of the communication of a playlist from the remote source to a wireless handheld remote control” (*Id.*)

The Petitioner’s vague assertion that Champion and Encarnacion provide a “more robust disclosure” of certain elements of the claims relative to Bi is not sufficient to articulate a meaningful distinction regarding the strength and weakness of Bi relative to Champion and/or Encarnacion. A reference either discloses a claimed element or it does not. In the present case, the Petitioner alleges that Bi discloses “all of the limitations of claims 1, 10, 11 and 12 and establishes a *prima facie* case of anticipation of these claims.” (*Id.* at 52.) As such, the Petitioner has no need to rely on Champion or Encarnacion to bridge any gap in the teachings of Bi.

Accordingly, in the interest of timely and efficient administration of justice, Petitioner’s redundant grounds 1 and 2 are not entitled to consideration.

XI. CONCLUSION

For all the reasons stated above, Patent Owner submits that the Petitioner failed to meet its burden to prove invalidity of Claims 10 – 12 of the ‘099 Patent. Patent Owner, therefore, respectfully requests that Claims 10 – 12 of the ‘099 Patent be finally found to be patentable over the asserted prior art and that a certificate confirming the patentability of the claims be granted.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2014, a true and accurate copy of this paper, PATENT OWNER'S PRELIMINARY RESPONSE TO SAMSUNG ELECTRONICS CO., LTD.'S PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,230,099 and its Exhibits, were served on the following counsel for Petitioner Samsung Electronics Co., Ltd. via email:

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