Trials@uspto.gov
571-272-7822

Paper No. 12
Entered: August 11, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITTER, INC.,
Petitioner,

v.

YOUTOO TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2017-00830
Patent 9,083,997 B2

Before SALLY C. MEDLEY, CHARLES J. BOUDREAU, and JESSICA C. KAISER, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
35 U.S.C. § 314 and 37 C.F.R. § 42.108

Twitter, Inc. ("Petitioner") filed a Petition pursuant to 35 U.S.C. §§ 311–319 requesting an *inter partes* review of claims 20–35 of U.S. Patent No. 9,083,997 B2, issued on July 14, 2015 (Ex. 1001, "the '997 patent"). Paper 1 ("Pet."). Youtoo Technologies, LLC ("Patent Owner") filed a Preliminary Response. Paper 10 ("Prelim. Resp."). Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we grant Petitioner's request and institute an *inter partes* review of all challenged claims.

I. BACKGROUND

A. The '997 Patent (Ex. 1001)

The '997 patent is titled "Recording and Publishing Content on Social Media Websites." The Abstract describes the subject matter as follows:

> Methods, systems, and apparatus, including computer programs encoded on a computer storage medium, for recording and publishing content on social networking websites and other websites include providing an imbedded link on a social networking webpage to media recorder software stored on an external server system, invoking the media recorder software within a displayed instance of the social networking webpage through an application programming interface for the social networking webpage, receiving a video stream defining video captured using the media recorder software at the external video management server system, generating and storing a video file using the received video stream at the external server system, selecting the stored video file for distribution via one or more communication networks, and providing the stored video file for display within displayed instances of webpages hosted on external web server systems.

Ex. 1001, Abstract.

Figure 1A of the '997 patent is reproduced below.

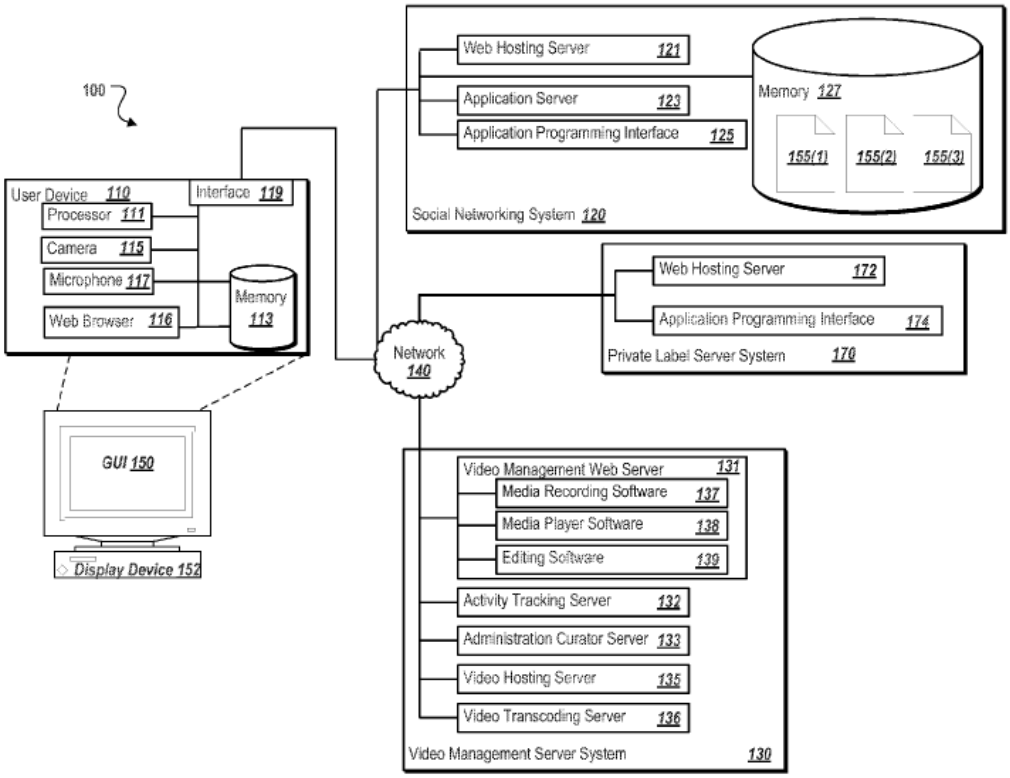

FIG. 1A

Figure 1A of the ’997 patent illustrates a functional block diagram of an architecture “for embedding a media recorder in a social networking website,” including user device 110, social networking system 120, video management server system 130, and private label server system 170. *Id.* at 6:45–49. In particular, social networking system 120 provides one or more social networking webpages to the user device, and the social networking webpage may include a link to launch media recording software 137 stored on video management server system 130. *Id.* at 7:1–9. Using that software, users can record a video that is streamed to video management server system 130 and stored there. *Id.* at 7:9–14.

B. Illustrative Claims

Of the challenged claims, claims 20 and 31 are independent claims and are reproduced below.

> 20. A non-transitory computer storage medium encoded with a computer program, the program comprising instructions that when executed by data processing apparatus cause the data processing apparatus to perform operations comprising:
>
> providing a content capture user interface within displayed instances of a first graphical user interface that includes display elements hosted on a web server system in response to a user selection of a link included in a graphical user interface that includes display elements hosted on the web server system, wherein the content capture user interface is provided within a frame displayed in the first graphical user interface and the content capture user interface is adapted to allow users to provide user submissions to a user content management server system using controls included within the frame that includes the content capture user interface, and the user submissions are captured using content capture software executing on the user content management server system through a communication interface between the web server system and the user content management server system;
>
> receiving a plurality of user submissions, wherein each user submission defines content captured through the content capture user interface on a respective displayed instance of the first graphical user interface and each user submission is captured using the content capture software executing on the user content management server system;
>
> generating a plurality of user submission content files based on the received user submissions; and
>
> storing the user submission content files on the user content management server system.

Id. at 23:19–51.

> 31. A system comprising:
>
> one or more user content management servers operable to interact with a plurality of user devices and to:
>
> provide a content capture user interface within displayed instances of a first graphical user interface that includes display elements hosted on a web server system in response to a user selection of a link included in a graphical user interface that includes display elements hosted on the web server system, wherein the content capture user interface is provided within a frame displayed in the first graphical user interface and the content capture user interface is adapted to allow users to provide user submissions using controls included within the frame that includes the content capture user interface, and the user submissions are captured using content capture software executing on one or more of the user content management servers through a communication interface between the web server system and the one or more user content management servers;
>
> receive a plurality of user submissions, wherein each user submission defines content captured through the content capture user interface on a respective displayed instance of the first graphical user interface and each user submission is captured using the content capture software executing on the one or more user content management servers;
>
> generate a plurality of user submission content files based on the received user submissions; and
>
> store the user submission content files on the user content management server system.

Id. at 24:58–25:22.

C. Related Proceedings

Petitioner and Patent Owner identify a related litigation in the Northern District of Texas involving the '997 patent titled: *Youtoo Technologies, LLC v. Twitter, Inc.*, Case No. 3:16-cv-00764-N (N.D. Tex.). Pet. 2–3; Paper 6, 2. Petitioner and Patent Owner also identify another *inter*

partes review filed by Petitioner regarding the ’997 patent: IPR2017-00829. Pet. 2–3; Paper 6, 2. Patent Owner also identifies a pending U.S. Patent Application that claims priority to the application leading to the ’997 patent. Paper 6, 2.

D. References

Petitioner relies on the following references:

1. “Nassiri” (US 2012/0254925 A1; published Oct. 4, 2012) (Ex. 1009);
2. “Bradford” (Anselm Bradford et al, HTML5 MASTERY: SEMANTICS, STANDARDS, AND STYLING (2011)) (Ex. 1010);
3. “Zhu” (US 2010/0180330 A1; published July 15, 2010) (Ex. 1013); and
4. “Tosh.o” (Brian Stelter, *Their Pain Is His Gain*, N.Y. TIMES, Aug. 22, 2010, at AR 15, 19) (Ex. 1017).

E. Grounds Asserted

Petitioner challenges the patentability of the ’997 patent claims on the following grounds:

Reference(s)	**Basis**	**Claim(s)**
Nassiri, Bradford, and Zhu	35 U.S.C. § 103(a)	20–27, 29, 31, 32, 34, and 35
Nassiri, Bradford, Zhu, and Tosh.o	35 U.S.C. § 103(a)	28, 30, and 33

Petitioner also relies on expert testimony from Dr. Kevin C. Almeroth (Ex. 1007, “Almeroth Decl.”).

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are construed according to their broadest reasonable interpretation in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under that standard, claim terms are generally given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art, in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner proposes constructions of certain claim terms and contends that terms for which it has not proposed constructions should be "given their plain and ordinary meaning under the broadest reasonable interpretation." Pet. 11–14. Patent Owner proposes only a construction for the term "communication interface." Prelim. Resp. 5–9. Other than the construction of "communication interface" discussed below, we determine explicit construction of any other term is not necessary to resolve the issues before us. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that "only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy").

Challenged claim 20 recites "the user submissions are captured using content capture software executing on the user content management server system through a communication interface between the web server system and the user content management server system," and challenged claim 31 recites a similar limitation. Ex. 1001, 23:35–40, 25:5–10. A "communication interface" is also recited in claims not challenged in this

inter partes review. *Id.* at 22:32–37 (claim 13) ("providing . . . a content capture graphical user interface through a communication interface between the web server system and the user content management server system"), 22:56–59 (claim 15) ("the video recorder interface is provided through a communication interface between the web server system and the video management server system"), 22:64–67 (claim 16) ("the stored video file is provided for display within the plurality of displayed instances of one or more webpages using a communication interface on the one or more web server systems").

Patent Owner argues that the "communication interface" recited in claims 20 and 31 "can only be a programmatic interface, such as an Application Programming Interface (API)." Prelim. Resp. 7. Patent Owner further contends that when the claims are read in light of the specification, a hardware network interface is not encompassed by the recited "communication interface." *Id.* at 7–9. In particular, Patent Owner argues that claims 20 and 31 recite the "communication interface" being between two different server systems and serving as the mechanism through which recording functionality on the management server system is provided. *Id.* at 7. Patent Owner further argues that claim 26, which depends indirectly from claim 20 and further recites "receiving, at the external user content management server system, information associated with user accounts for a plurality of displayed instances of one or more webpages hosted on the one or more external web server systems," requires an API. Prelim. Resp. 7–8; Ex. 1001, 24:14–18. Patent Owner also argues that APIs "are the only interfaces that provide a communication interface between a web-based server system" and "a separate and distinct content management server

system" in the '997 patent specification. Prelim. Resp. 8–9 (citing Ex. 1001, Fig. 1A, 9:11–19, 10:26–37, 13:52–54, 13:64–67; Ex. 2001 ¶¶ 14–28).

Petitioner contends that "the claimed 'communication interface,' as disclosed by the '997 Patent, includes communication network interfaces and APIs." Pet. 37 (citing Ex. 1001, 8:66–9:3, 20:32–34; Ex. 1007 ¶ 153).

At this stage of the proceeding, we are not persuaded that "communication interface" as recited in the challenged claims is limited to programmatic interfaces as Patent Owner contends. We observe that the term "communication interface" is not used in the '997 patent specification. In addition, we acknowledge that the '997 patent specification describes server systems with "application programming interface[s]" that "can facilitate the delivery of content" and "the exchange of information" between server systems. Ex. 1001, 9:11–19; *see also*, *e.g.*, *id.* at 8:29–41 ("third parties can define applications or services that may be hosted on external third party servers" through "application programming interfaces 125 (and/or software development kits)"), 10:26–37 (software can be invoked through an API), 13:64–67 (videos can be accessed through a website through an API). While we agree that such disclosures support the recited "communication interface" encompassing programmatic interfaces such as APIs, we are mindful not to limit the claims to examples disclosed in the specification. *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004) ("Absent claim language carrying a narrow meaning, the PTO should only limit the claim based on the specification or prosecution history when those sources expressly disclaim the broader definition."). Based on the current record, we find the specification discloses APIs (and software development

kits) as examples of communication interfaces, but does not limit the recited "communication interface" to only those or other programmatic interfaces.

In addition, at this stage of the proceeding, we are not persuaded by Patent Owner's argument that the construction of "communication interface" is limited to programmatic interfaces because dependent claim 26 requires a programmatic interface. Prelim. Resp. 7–8. We note that dependent claim 26 does not recite a "communication interface" and does not require that the recited "information" is received through a "communication interface." Ex. 1001, 24:10–18. Even accepting Patent Owner's contention that an API would be needed for the communication recited in dependent claim 26, we observe that both claim 26 and claim 20 from which claim 26 indirectly depends use the transitional term "comprising" and thus do not preclude additional unclaimed elements.

For the reasons discussed above and for purposes of this decision, we determine "communication interface" as recited is not limited to only programmatic interfaces. We determine that we need not further construe "communication interface" at this stage of the proceeding to resolve the issues before us.

B. Legal Principles

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art;

(2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in the record, objective evidence of nonobviousness. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). In that regard, an obviousness analysis "need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 550 U.S. at 418.

C. Asserted Obviousness over Nassiri, Bradford, and Zhu

1. Overview of Nassiri, Bradford, and Zhu

Nassiri is titled "Computer Systems and Methods for Video Capturing, Managing, and/or Sharing," and was filed on April 1, 2011. Ex. 1009, at [54], [22]. Petitioner contends Nassiri is prior art under 35 U.S.C. § 102(e). Pet. 5. Nassiri's Abstract describes its subject matter as follows:

> Examples are described for capturing, managing, and/ or sharing videos. The videos may be captured such that they are limited in time, such as 30 seconds or less in some examples. Enterprises may establish campaigns and capture videos associated with the campaigns. Captured videos may be displayed to users in an order selected based on the number of hits or conversions the video had previously generated. A host video system may provide embedded code for video capture and playback on an enterprise site.

Ex. 1009, at [57].

Bradford is a book titled "HTML5 Mastery: Semantics, Standards, and Styling" and has a copyright date of 2011. Ex. 1010. Petitioner contends Bradford is prior art under 35 U.S.C. § 102(a). Pet. 5–6 (citing Ex. 1011 ¶¶ 1–16; Ex. 1015 ¶ 2; Ex. 1016).

Zhu is titled "Securing Communications for Web Mashups" and was published on July 15, 2010. Ex. 1013, [43], [54]. Petitioner contends Zhu is prior art under 35 U.S.C. § 102(b). Pet. 5.

2. Obviousness

Petitioner contends that claims 20–27, 29, 31, 32, 34, and 35 would have been obvious over Nassiri, Bradford, and Zhu. Pet. 14–58. We have reviewed the information provided by Petitioner, including the relevant portions of the supporting Almeroth Declaration (Ex. 1007), along with the Patent Owner's arguments and evidence, and are persuaded, based on the current record, that Petitioner has demonstrated a reasonable likelihood of prevailing on this obviousness challenge.

For example, claim 20 recites "providing a content capture user interface within displayed instances of a first graphical user interface that includes display elements hosted on a web server system in response to a user selection of a link included in a graphical user interface that includes display elements hosted on the web server system." Ex. 1001, 23:24–29. Petitioner contends the combination of Nassiri and Bradford teaches this limitation. Pet. 24–30. In particular, Petitioner contends Nassiri teaches providing a video recording interface (i.e., content capture user interface) within a displayed instance of a webpage, and that a person of ordinary skill in the art would have understood that Nassiri's webpage is a graphical user interface. *Id.* at 24–26 (citing Ex. 1009 ¶¶ 17, 19, 21, 26, 38; Ex. 1007 ¶¶ 117–124). Petitioner further contends Nassiri's webpage has display elements and is hosted on its enterprise computing system. *Id.* at 26–27 (citing Ex. 1009 ¶¶ 17, 19, 39, Fig. 3; Ex. 1007 ¶¶ 125–128). Petitioner also contends Nassiri teaches that its video recorder interface is provided in

response to selection of a link on its webpage. *Id.* at 27–29 (citing Ex. 1009 ¶¶ 18, 19, 21, 26, 30, 31, Fig. 2; Ex. 1007 ¶¶ 129–135). Petitioner further contends Bradford teaches "how a link within a webpage can target an iframe within the same webpage." *Id.* at 30 (citing Ex. 1010, 161; Ex. 1007 ¶¶ 136–137).

Claim 20 further recites "wherein the content capture user interface is provided within a frame displayed in the first graphical user interface and the content capture user interface is adapted to allow users to provide user submissions to a user content management server system using controls included within the frame that includes the content capture user interface." Ex. 1001, 23:29–35. Petitioner contends Nassiri teaches this limitation. Pet. 30–33. Specifically, Petitioner contends Nassiri's video recorder can be provided in an iframe in a webpage. *Id.* at 31 (citing Ex. 1009 ¶¶ 19, 26, Fig. 3; Ex. 1007 ¶¶ 139–141). Petitioner further contends Nassiri's video recorder is adapted to transmit user recorded videos to its video host computing system and that the submitted videos are captured using button controls in the video recorder iframe. *Id.* at 31–33 (citing Ex. 1009 ¶¶ 28, 33–35, 38, Figs. 2, 3; Ex. 1007 ¶¶ 142–145).

Claim 20 also recites "the user submissions are captured using content capture software executing on the user content management server system through a communication interface between the web server system and the user content management server system." Ex. 1001, 23:35–40. Petitioner contends the combination of Nassiri and Zhu teaches this limitation. Pet. 34–37. Specifically, Petitioner contends Nassiri teaches videos are captured using executable instructions for video recording that are executing on the video host computing system. *Id.* at 34–35 (citing Ex. 1009 ¶¶ 15, 21, 38,

Fig. 8; Ex. 1007 ¶¶ 146–150). Petitioner further contends Nassiri teaches "data may be transmitted between the video host computing system 120 and the user's contributor computing system 130 'through the enterprise computing system 110 as an intermediary,'" as well as its different computing systems (i.e., video host computing system and enterprise computing system) having interconnects to communicate with each other through a network. *Id.* at 35–36 (citing Ex. 1009 ¶¶ 16, 32, Fig. 8; Ex. 1007 ¶¶ 151–152). Petitioner further contends Zhu teaches that each of its application servers has an interface for enabling communication over a network and that APIs can be used to create its web mashups. *Id.* at 36–37 (citing Ex. 1013 ¶¶ 1, 25, Fig. 2A; Ex. 1007 ¶ 153).

Claim 20 recites "receiving a plurality of user submissions, wherein each user submission defines content captured through the content capture user interface on a respective displayed instance of the first graphical user interface and each user submission is captured using the content capture software executing on the user content management server system." Ex. 1001, 23:41–47. Petitioner contends Nassiri teaches this limitation. Pet. 37–40. In particular, Petitioner contends Nassiri's video host computing system receives videos from users. *Id.* at 37–38 (citing Ex. 1009 ¶¶ 20, 35, 37, Fig. 2; Ex. 1007 ¶¶ 156–159). Petitioner also contends Nassiri teaches its videos are captured using button controls in its video recorder within a displayed instance of a webpage and its video recording executable instructions execute on the video host computing system. *See id.* at 38–40.

Claim 20 further recites "generating a plurality of user submission content files based on the received user submissions" and "storing the user submission content files on the user content management server system."

Ex. 1001, 23:48–51. Petitioner contends Nassiri teaches that its video host computing system may store the received videos in any suitable file format, and that it would have been obvious that a file must be generated from the received videos for the video hosting system to store the received videos in a file format. Pet. 40–41 (citing Ex. 1009 ¶¶ 15, 28, 35, 50, claim 1, Figs. 7, 8; Ex. 1007 ¶¶ 168–174).

Petitioner further provides analysis detailing where it contends each limitation of claims 21–27, 29, 31, 32, 34, and 35 is taught in Nassiri, Bradford, or Zhu. *Id.* at 41–58. We have reviewed Petitioner's evidence and argument, and find that Petitioner has sufficiently shown that the combination of Nassiri, Bradford, or Zhu teach each limitation of those claims at this stage of the proceeding.

Petitioner also provides a sufficiently persuasive rationale for combining the teachings of Nassiri, Bradford, and Zhu. Specifically, Petitioner contends that applying Bradford's teachings about using a link to target an iframe in a displayed webpage in Nassiri would save resources on the video host computing system because "the video recorder is not displayed if the link is not clicked" and because only a portion of a webpage (i.e., the iframe) would need to be loaded when the link is clicked. Pet. 18–21 (citing Ex. 1007 ¶¶ 102–106). In addition, Petitioner explains that Nassiri's computing systems communicate with each other through a network, and a person of ordinary skill in the art would have recognized that Zhu's network interface "provides an efficient way to allow communication through a network using standard protocols (e.g., Ethernet for wired and Wi-Fi for wireless) at the link layer." *Id.* at 21–22 (citing Ex. 1007 ¶¶ 107–109). Petitioner further contends a person of ordinary skill in the art would

have used APIs, as taught in Zhu, "to provide an efficient and standardized interface at the application level for communicating amongst the distinct computing systems." *Id.* at 22–23.

Regarding claims 20 and 31, Patent Owner argues the cited references do not teach "a communication interface" based on its proposed construction of that term. Prelim. Resp. 10–19. As discussed above in Section II.A., we determine for purposes of this decision that the recited "communication interface" is not limited to only programmatic interfaces. Thus, we are not persuaded at this stage by Patent Owner's arguments based on that construction.

Patent Owner further argues a person of ordinary skill in the art would have no reason to modify Nassiri with Zhu, "absent impermissible hindsight." Prelim. Resp. 15. In particular, Patent Owner presents several arguments regarding that a person of ordinary skill would not have incorporated Zhu's APIs into the Nassiri-Bradford combination. *Id.* at 15–19. Because we have determined that the recited "communication interface" is not limited to only programmatic interfaces and Petitioner also relies on Zhu's network interfaces, we determine that these arguments are not persuasive at this stage of the proceeding.

Patent Owner also argues Nassiri does not teach the additional limitations of dependent claim 32. Prelim. Resp. 19–27. Claim 32 depends from claim 31 and recites "wherein the user submissions comprise user-generated video content and the user-generated video content is received by the one or more user content management servers as the content is captured through the content capture user interface." Ex. 1001, 25:23–26:2. Patent Owner notes that these additional limitations must be read in

conjunction with the limitations of independent claim 31, including the recitations of "generat[ing] a plurality of user submission content files based on the received user submissions" and "stor[ing] the user submission content files on the user content management server system." Prelim. Resp. 20. Patent Owner contends that this claim language requires that a "video stream is recorded and converted into a video file by the server system, not the user device," but Nassiri describes a "storehouse server architecture" that does not meet the limitations of claim 32. *Id.* (emphasis omitted). In particular, Patent Owner contends that Nassiri does not teach "video being recorded to the video management server system as the video is captured" because Nassiri discloses that "videos" can be transmitted as files, the portions of Nassiri that describe video being transmitted "as it is being recorded" refer to video files being transmitted, and Nassiri does not describe the video host computing system performing any actions on the received data other than storing it. *Id.* at 23–27.

On the current record, we are not persuaded by Patent Owner's arguments and determine Petitioner has sufficiently shown Nassiri teaches the limitations of claim 32. Patent Owner's arguments focus on its contention that "Nassiri describes a storehouse server architecture," where the server "merely acts as a storehouse for video files that the user device has captured and stored locally." Prelim. Resp. 20. Nassiri, however, describes transmitting video to the host video computing system both after it has been recorded and "while it is being recorded." Ex. 1009 ¶ 28; *see also id.* ¶ 35 ("In some examples, the video may be transmitted to the video host computing system 120 of FIG. 1 in part as it is being recorded. In other examples, the video is received by the video host computing system 120

only when the recording is complete."). Petitioner, supported by its expert's testimony, relies on these portions of Nassiri as teaching "the user-generated video content is received by the one or more user content management servers as the content is captured through the content capture user interface," as recited in claim 32. Pet. 56 (citing its analysis of a similar limitation of claim 21), 41–42 (citing Ex. 1009 ¶¶ 15, 28, 35, 38; Ex. 1007 ¶¶ 175–177).

At this stage of the proceeding, we likewise are unpersuaded by Patent Owner's arguments that Petitioner has failed to show Nassiri teaches "generat[ing] a plurality of user submission content files based on the received user submissions," when that limitation recited in claim 31 is read in conjunction with the additional limitations of dependent claim 32. Prelim. Resp. 24–27. For that limitation of claim 31, Petitioner relies on its analysis of the similar limitation of claim 20 discussed above. Pet. 55. In that analysis, Petitioner contends Nassiri teaches that its video host computing system may store the received videos in any suitable file format, and that it would have been obvious that a file must be generated from the received videos for the video hosting system to store the received videos in a file format. *Id.* at 40–41 (citing Ex. 1009 ¶¶ 15, 28, 35, 50, claim 1, Fig. 7; Ex. 1007 ¶¶ 168–171). In addition, Petitioner's expert testifies that a person of ordinary skill in the art "would have understood, and it would have been obvious that, when the video host computing system 120 stores the received videos in a file format, a plurality of video files are generated from the received user videos" and that "storing the video in storage" "include[s] generation of the file in the suitable file format." Ex. 1007 ¶¶ 169–170. We

find Petitioner's analysis and argument, as supported by its expert's testimony, sufficient at this stage of the proceeding.[1]

Patent Owner further contends that Petitioner's contentions are deficient for claim 21 for the same reasons as claim 32. Prelim. Resp. 28. For the reasons discussed above, we find Petitioner's showing sufficient as to claim 32 (and also as to claim 21 which recites a similar additional limitation).

For the reasons discussed above, based on the current record, we determine Petitioner has shown a reasonable likelihood of prevailing with respect its obviousness challenge to claims 20–27, 29, 31, 32, 34, and 35 over Nassiri, Bradford, and Zhu.

D. Asserted Obviousness over Nassiri, Bradford, Zhu, and Tosh.o

Tosh.o is a New York Times article titled "Their Pain Is His Gain" and is dated August, 22, 2010. Ex. 1017. Tosh.o describes the Comedy Central show of the same name, which featured amateur internet videos. *Id.*

[1] As discussed above, we determine that Petitioner has shown a reasonable likelihood of prevailing on its obviousness challenge to claim 32 based solely on the current record in this proceeding. We note, however, that in IPR2017-00829, Petitioner contends a person of ordinary skill in the art would have understood that Nassiri's description of transmitting a video "in part as it is being recorded" describes "a real time operation where part of the video is streamed," and cites its expert's testimony in support. IPR2017-00829, Paper 1, 32 (emphasis omitted). In addition, in that proceeding, Petitioner contends Bradford teaches MPEG-4 streaming, and it would have been obvious to apply such streaming in Nassiri which teaches storing video in .mpeg files. *Id.* at 32–33. Thus, in that proceeding, Petitioner contends that it would have been obvious that a file must be generated from the video stream for the video hosting system to store the received video stream in a file format. *Id.* at 36.

Petitioner contends that claims 28, 30, and 33 would have been obvious over Nassiri, Bradford, Zhu, and Tosh.o. Pet. 58–63. We have reviewed the information provided by Petitioner, including the relevant portions of the supporting Almeroth Declaration (Ex. 1007), along with Patent Owner's arguments and evidence, and are persuaded, based on the current record, that Petitioner has demonstrated a reasonable likelihood of prevailing on this obviousness challenge.

For example, claim 28 depends indirectly from claim 20 and further recites "monitoring viewer response to the user submission content file; and using the viewer response in selecting user submission content defined in the user submission content file for inclusion in a linear television program." Ex. 1001, 24:37–41. Petitioner relies on Nassiri as teaching "monitoring" and "using" viewer response. Pet. 48–51, 59–60. Petitioner further contends Nassiri describes that the user system on which videos are displayed "may [be a] set top box." *Id.* at 60 (citing Ex. 1009 ¶ 16) (emphasis omitted). Petitioner relies on Tosh.o as describing using user-submitted video for display in a traditional television program. *Id.* at 61 (citing Ex. 1017, 2–3).

Petitioner further provides analysis detailing where it contends each limitation of claims 30 and 33 is taught in Nassiri or Tosh.o. *Id.* at 61–63. We have reviewed Petitioner's evidence and argument, and find that Petitioner has sufficiently shown Nassiri, Bradford, Zhu, or Tosh.o teach each limitation of claims 28, 30, and 33 at this stage of the proceeding.

Petitioner also provides a sufficiently persuasive rationale for combining the teachings of Nassiri and Tosh.o. Specifically, Petitioner contends that applying Tosh.o's teaching of using popular internet videos in

a television show in Nassiri would broaden distribution of those videos. Pet. 58–59. Patent Owner does not specifically address this ground or claims 28, 30, and 33 at this stage of the proceeding.

For the reasons discussed above, based on the current record, we determine Petitioner has shown a reasonable likelihood of prevailing with respect to its obviousness challenge to claims 28, 30, and 33 over Nassiri, Bradford, Zhu, and Tosh.o.

III. SUMMARY

We determine that Petitioner has demonstrated a reasonable likelihood of prevailing on its challenges to claims 20–35 of the '997 patent as set forth above. At this stage of the proceeding, we have not made a final determination as to the patentability of any of these challenged claims or the construction of any claim term.

IV. ORDER

It is, therefore,

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '997 patent is hereby instituted on the following grounds:

A. Obviousness of claims 20–27, 29, 31, 32, 34, and 35 over Nassiri, Bradford, and Zhu; and

B. Obviousness of claims 28, 30, and 33 over Nassiri, Bradford, Zhu, and Tosh.o; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial commencing on the entry date of this decision.

PETITIONER:

David McCombs
David.mccombs.ipr@haynesboone.com

Gregory Huh
Gregory.huh.ipr@haynesboone.com

Theodore Foster
Ipr.theo.foster@haynesboone.com

Raghav Bajaj
Raghav.bajaj.ipr@haynesboone.com

PATENT OWNER:

Scott McKeown
cpdocketmckeown@oblon.com

Spencer Patterson
spatterson@gchub.com

Stephen Levine
slevine@ccsb.com