

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS, LLC,

Petitioner

v.

VL COLLECTIVE IP LLC,

Patent Owner

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IPR2022-01086

U.S. Patent 8,605,794

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**PETITIONER’S REQUEST FOR REHEARING OF THE  
FINAL WRITTEN DECISION**

## **I. INTRODUCTION**

In the Final Written Decision (Paper 37) (“Decision”), the Board correctly held that claims 1, 3, 5, 9, 12, 13, and 15 of the ’794 patent are anticipated by and rendered obvious by Sonohara (EX1003). However, the Decision held that dependent claims 20 and 21 are not anticipated by or rendered obvious over Sonohara, and that claims 1, 3, 5, 9, 12, 13, 15, 20, and 21 are not anticipated by or rendered obvious over Abbott (EX1004).

The Board should grant rehearing of the Decision for two independent reasons. First, the Decision misapprehended and overlooked the evidence of record showing that Sonohara anticipates and renders obvious dependent claims 20 and 21 by applying an incorrect understanding of the reference and the negative limitation recited in the claims. Second, the Decision misapprehend and overlooked the evidence of record showing that Abbott anticipates and renders obvious independent claims 1 and 9 as well as dependent claims 3, 5, 12, 13, 15, 20, and 21 by not applying express teachings of Abbott, as cited in the Petition, showing that Abbott discloses the claimed “assignment rule” limitations.

## **II. STANDARD OF REVIEW**

When rehearing a decision on whether to institute a trial, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). “An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on

factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors.” *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005) (citing *Arnold P’Ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004)). The party requesting rehearing “must specifically identify all matters [it] believes the Board misapprehended or overlooked, and the place where each matter was previously addressed.” 37 C.F.R. § 42.71(d).

### **III. THE DECISION MISAPPREHENDED AND OVERLOOKED EVIDENCE SHOWING THAT SONOHARA ANTICIPATES AND RENDERS OBVIOUS DEPENDENT CLAIMS 20 AND 21**

In finding independent claims 1 and 9 unpatentable, the Decision correctly found that the control information in Sonohara’s header teaches the claimed “assignment rule.” Decision, 42 (“Petitioner persuasively shows that the assignment rule reads on Sonohara’s header control information, as supported by Dr. Freedman’s testimony.”) (citing EX1005, ¶¶ 148-153).

However, in evaluating dependent claims 20 and 21, which recite “the assignment rule is not based on a timestamp,” the Decision misapprehended and/or overlooked the parties’ agreed-upon understanding of the meaning of a “timestamp” in determining whether Sonohara teaches claims 20 and 21. *See* Section II.A below. In addition, the Decision misapprehended and/or overlooked evidence of record showing that the control information in Sonohara’s header (the claimed “assignment rule”) is **not** based on a timestamp, as claims 20 and 21 recite. *See* Section II.B

below. The Board should therefore grant rehearing and find claims 20 and 21 unpatentable.

**A. The Parties' Understanding of a "Timestamp" is Not Contained in the Control Information in Sonohara's Header**

The parties agreed that a "timestamp" "would be understood to be an absolute time or time range, e.g., 0:00.00–0:01.00," as Dr. Freedman, Petitioner's expert, testified. EX1005, ¶ 167; Decision, 45<sup>1</sup>; EX2007, ¶ 92 (Dr. Goodrich applying Dr. Freedman's understanding of a "timestamp"); Decision, 46 (citing EX2007, ¶ 92). Patent Owner and Dr. Goodrich did not offer an alternative understanding of the meaning of a "timestamp" in claims 20 and 21.

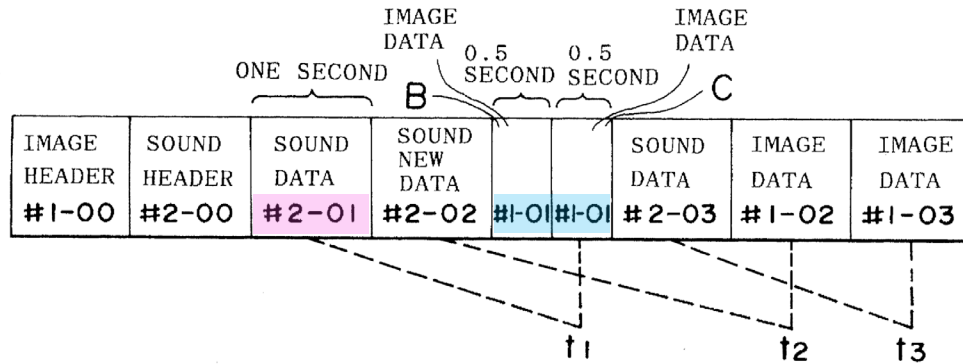
However, the Board misapprehended and/or overlooked the parties' agreed-upon understanding of a "timestamp" in evaluating whether the control information in Sonohara's header is based on a timestamp. The Decision refers to Sonohara's Figure 8 below and cites Dr. Goodrich's testimony that "'at the time t1, the sound data #2-01 for one second and the new image data #1-01 for 0.5 seconds and the image data #1-01 for 0.5 seconds are read in synchroni[sm].'" Decision, 45 (quoting

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<sup>1</sup> The Decision cites EX1005, ¶ 73 regarding Dr. Freedman's explanation that a "timestamp" "would be understood to be an absolute time or time range, e.g., 0:00.00–0:01.00." Decision, 45. However, Dr. Freedman's testimony on this point is at EX1005, ¶ 167.

EX2007, ¶ 92, which quotes EX1003, 7:33-36).

FIG. 8



EX1003, Fig. 8 (annotated)

Based on Dr. Goodrich's explanation of Sonohara's Figure 8 above, the Decision credited "Dr. Goodrich's opinion that a person of ordinary skill in the art 'would understand that the number and duration header information disclosed in Sonohara [] correspond to a timestamp.'" Decision, 45-46 (citing EX2007, ¶ 92; EX1003, 5:57-65, 6:53-67, 7:33-65). However, in doing so, the Board misapprehended or overlooked the parties' agreed-upon understanding that a "timestamp" "would be understood to be an absolute time or time range, i.e., 0:00.00–0:01.00," as testified by Dr. Freedman. EX1005, ¶ 167; Decision, 45; EX2007, ¶ 92 (Dr. Goodrich applying Dr. Freedman's understanding of a "timestamp"); Decision, 46 (citing EX2007, ¶ 92).

But Sonohara's control information is neither an absolute time nor a time range. As shown in Figure 8 above, the control information in Sonohara's header

includes data and track identifiers (e.g., “sound data #2-01” and “image data #1-01”) to output and synchronize image and audio data segments. EX1003, Abstract, Fig. 8; Pet., 54-55; Reply, 27; EX1005, ¶¶ 166-169. The data and track identifiers (e.g., “sound data #2-01”) do not include either (1) an absolute time or (2) a time range, the parties’ agreed-upon meaning of a “timestamp.” Though Dr. Goodrich characterized Sonohara’s Figure 8 as disclosing that the data segments include “number and duration header information” (e.g., “the new image data #1-01 for 0.5 seconds”), even this combination of data is not an absolute time nor time range. EX2007, ¶ 92. Therefore, the Decision misapprehended or overlooked Sonohara’s disclosure that the control information in Sonohara’s header, i.e., the data and track identifiers such as “sound data #2-01” and “image data #1-01” in Figure 8, do not include and are therefore not “based on” either (1) an absolute time or (2) a time range, the parties’ agreed-upon meaning of a “timestamp.” The Board should therefore grant rehearing because the Decision’s analysis of claims 20 and 21 misapprehends and/or overlooks the evidence of record showing that Sonohara anticipates and renders obvious dependent claims 20 and 21. Pet., 54-55 (claim 20), 57 (claim 21); Reply, 26-27; EX1005, ¶¶ 166-169.

**B. The Control Information in Sonohara’s Header is Not Based on a Timestamp**

The Decision also misapprehended and/or overlooked evidence of record showing that the control information in Sonohara’s header (the claimed “assignment

rule”) is not based on a timestamp, as recited in claims 20 and 21. As noted above in Section II, the Decision correctly found that the control information in Sonohara’s header teaches the claimed “assignment rule.” Decision, 42. However, in analyzing dependent claims 20 and 21, the Decision focused on the “unit times” illustrated in Sonohara’s Figure 8, rather than the control information in Sonohara’s header, which discloses the claimed “assignment rule.” Specifically, the Decision agreed with Patent Owner’s argument that “Sonohara discloses outputting **corresponding unit times . . .** that have **a predetermined, constant time duration . . . at specific, pre-set times . . .** to assign the alleged content-related data segments to one another,” such that “[t]he **unit times** correspond to a **time range**, which is a timestamp,” and “**the pre-set times** correspond to absolute times, and so are also time stamps.” Decision, 46 (quoting Patent Owner’s Response, 64).

The Decision’s adoption of Patent Owner’s argument focusing on “unit times” in Sonohara’s Figure 8 misapprehends and/or overlooks the evidence cited in the Petition and Petitioner’s Reply, which shows that the assignment rule is taught by the data and track identifiers in Sonohara’s header (e.g., “sound data #2-01” and “image data #1-01” in Figure 8). *See, e.g.*, Pet., 48-49 (explaining that the claimed assignment rule is disclosed by “the **control information in the header**,...where the header ‘include[es] control information for controlling transfer of said image data and said sound data...**said control information indicating a relationship**

**between said image data and said sound data....”**) (citing EX1003, claim 1; EX1005, ¶ 148); Pet., 49 (“[A]s shown in Figure 8 of *Sonohara*, the control information in the header assigns sound data #2-01 to image data #1-01 so that the segments are output synchronously at time t1. . . .Likewise, the control information in the header assigns sound data #2-02 to image data #1-02 so that they are output synchronously at time t2.”) (citing EX1003, 7:7:33-36, 7:48-50; EX1005, ¶ 151); Reply, 21-26 (citing, e.g., EX1016, ¶¶ 54 (“*Sonohara* discloses that the image and sound data segments in the file 1 are synchronized and output sequentially **based on the track and data identifying numbers** in the file 1, as shown in Figures 1 and 7.”) (citing EX1003, ¶¶ 135-137), 60 (“*Sonohara*’s track and identifying numbers (e.g., ‘sound data #2-01’ and ‘image data #1-01’ in Figure 8 above) in the file’s header 21 are each ‘an identifier to be uniquely given to the track which is present in the file 1,’ and the identifiers given to both the image and audio data “allow[] recognition of which specific track the data belongs. . . . [T]he information that represents the assignment is contained in the control information in the header.”) (citing EX1003, 4:35-44; EX1005, ¶ 150).

Instead of focusing on the data and track identifiers, i.e., the information in *Sonohara*’s control information, the Board shifted focus to whether Dr. Goodrich’s **combination** of the data and track identifiers and duration information (which is **not** in *Sonohara*’s control information) qualified as a “timestamp.” The data and track



identifiers in Sonohara's header do not include "unit items" or have "constant time duration[s]...at specific, pre-set times," as Patent Owner incorrectly argued, and as the Decision adopted. Thus, the Decision misapprehended and/or overlooked how the data and track identifiers in Sonohara's header—rather than the "unit times" in Sonohara's Figure 8—correspond to the claimed "assignment rule," and how the data and track identifiers in Sonohara's header are not based on a timestamp. Decision, 46. The Petition showed that each portion of data for a unit of time corresponds to a claimed "segment," not the assignment rule. Pet., 38 (citing EX1005, ¶ 128); Reply, 21. Thus, the Board misapprehended or overlooked that the "unit times" in Sonohara's Figure 8 correspond to the claimed "data segments," not the "assignment rule."

The Board should also grant rehearing for this additional reason because the Decision's analysis of claims 20 and 21 misapprehends and/or overlooks the evidence of record showing that the data and track identifiers in Sonohara's header anticipates and renders obvious dependent claims 20 and 21. Pet., 54-55 (claim 20), 57 (claim 21); Reply, 26-27; EX1005, ¶¶ 166-169.

#### **IV. THE DECISION MISAPPREHENDED AND OVERLOOKED EVIDENCE SHOWING THAT THE CHALLENGED CLAIMS ARE ANTICIPATED BY AND OBVIOUS OVER ABBOTT**

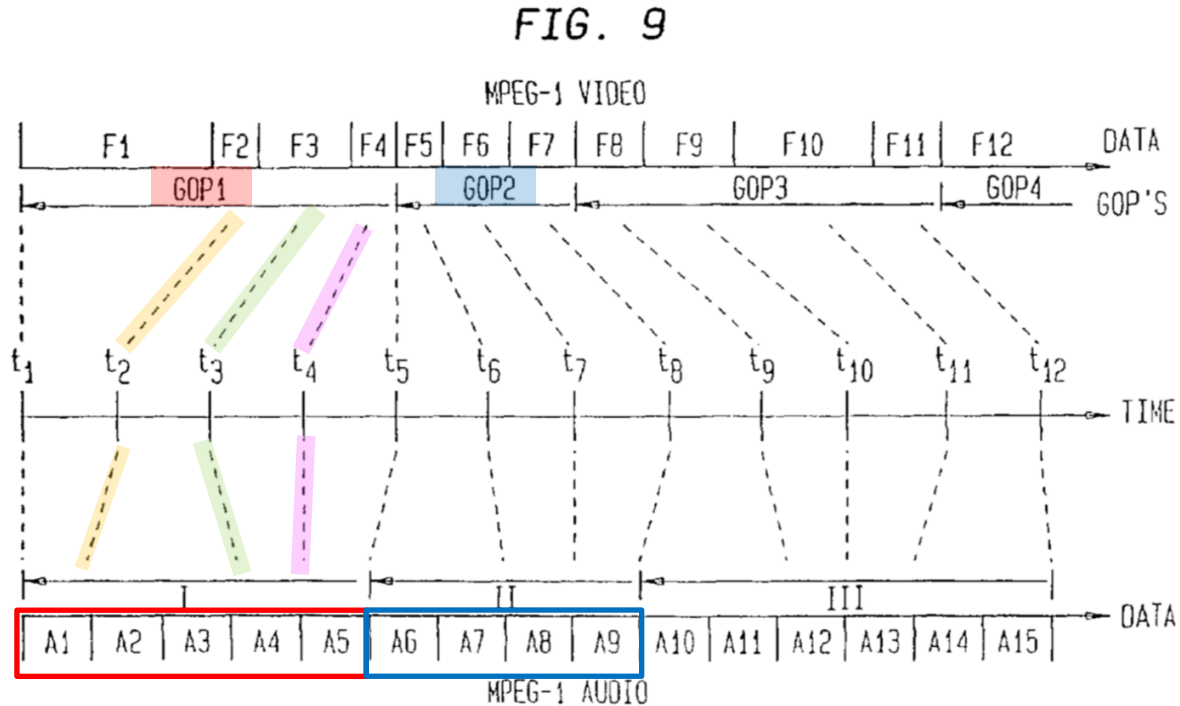
The Decision determined that Abbott does not disclose or render obvious the claimed assignment rule synchronizing "each of the content-related second data

segments [to be] output together with an associated one of the content-related first data segments” “because Abbott discloses synchronizing only a single audio frame with a single video GOP on the basis of Abbott’s index files.” Decision, 35. In doing so, the Decision misapprehended and/or overlooked express teachings in Abbott, as cited in the Petition and Petitioner’s Reply, showing that Abbott assigns and synchronizes each of the *multiple* audio segments (corresponding to the claimed “second data segments”) to one of the Groups of Pictures (GOPs) (corresponding to the claimed “first data segments”), as explained below.

Initially, the Decision correctly found that “assignment rule” limitation of claim 1 (and the corresponding limitation in claim 9) “requires only that ‘content-related first data segments of a first data file’ be synchronized with ‘content-related data segments of a second data file.’” Decision, 33-34 (quoting EX1001, 7:45-47). However, the Decision misapprehended and/or overlooked how Abbott expressly teaches this feature of claims 1 and 9.

Abbott’s Figure 9 below shows an example where **GOP1** includes video segments F1-F4, **GOP2** includes video segments F5-F7, and so on. Pet., 18-20 (citing EX1004, 17:3-26, Fig. 9); EX1005, ¶ 77; Reply, 28-29. In addition, each of the multiple audio frames (the claimed “second data segments”) are assigned to one GOP. For example, audio segments **A1-A5** are each assigned to **GOP1** (spanning time interval  $t_1$  to  $t_5$ ), and audio segments **A6-A9** are each assigned to **GOP2**

(spanning time interval  $t_5$  to  $t_8$ ). Pet., 20-23 (citing EX1004, 17:27-35, 18:66-19:17, Fig. 9); EX1005, ¶¶ 78-79; EX1016, ¶ 64; Reply, 29.



EX1004, Fig. 9 (annotated); Reply, 29

The Decision incorrectly agreed with Patent Owner's characterization that "Abbott at most discloses creating indexes (the alleged assignment rule) that correlate groups of audio frames with video GOPs, using the correlations to synchronize **a single audio frame** with **a single video GOP** when a user jumps to a different point in the media." Decision, 34 (quoting Patent Owner's Response, 41) (emphasis added).

In doing so, the Decision misapprehended and overlooked Abbott's express teachings. As cited in the Petition, Abbott discloses that *multiple* audio data

segments are assigned to one GOP, with each audio segment being assigned to the “byte position” of the corresponding video segment. Pet., 22. Specifically, in analyzing the “assignment rule” limitation, the Petition cited Abbott at 18:66-19:17, which expressly provides that “**each audio frame**” in a set of audio frames that most closely spans the time interval of a GOP is assigned to the same relative byte position at the start of that GOP:

To prevent audio data from being “out of sync”, it is necessary to correlate the corresponding audio data to each GOP. To do so, an index file for the video data is constructed first. As discussed above with respect to FIG. 9, an index file for the video data would contain repeated atom-relative byte positions for the frames within GOP1, repeated atom-relative byte positions for the frames within [GOP2], repeated atom-relative byte positions for the frames within GOP3, etc. Such a video data index file is then used to construct an index file for the corresponding audio data. **An audio data index file is constructed so that, for the set of audio frames that most closely spans the time interval spanned by each GOP, each audio frame in that set is assigned the same atom-relative byte position.** The assigned atom-relative byte position is the beginning of the set of audio frames. This synchronization method is illustrated in FIG. 9.

EX1004, 18:66-19:17 (cited in Pet., 22) (emphases added).

Thus, Abbott expressly provides that “**each audio frame**” in a “set of audio frames that most closely spans the time interval spanned by each GOP” is assigned to the beginning of that GOP, as shown in Fig. 9. Pet., 22 (citing EX1004, 18:66-

19:17). Accordingly, as shown in Fig. 9 above, **each of** audio segments **A1-A5** (an example of the claimed “second data segments”) are assigned to **GOP1** (an example of the claimed “first data segment”), and **each of** audio segments **A6-A9** (another example of the claimed “second data segments”) are assigned to **GOP2** (another example of the claimed “first data segment”). Pet., 22-24 (citing EX1004, 18:66-19:39); EX1005, ¶¶ 84-86; Reply, 29-30; EX1016, ¶¶ 64-65.

Therefore, the Decision misapprehended and/or overlooked express teachings in Abbott, as cited in and extensively detailed in the Petition, showing that Abbott discloses and therefore renders obvious “assigning each one of the content-related second data segments to one of the content-related first data segments,” as recited in claims 1 and 9. The Decision’s finding that “Abbott discloses synchronizing only a single audio frame with a single video GOP on the basis of Abbott’s index files” (Decision, 35) is an abuse of discretion because it is contrary to the express teachings of Abbott, as cited in the Petition. The Board should therefore grant rehearing and find that claims 1 and 9 are anticipated by and rendered obvious over Abbott.

Because the Decision misapprehended and/or overlooked the express teachings in Abbott showing that Abbott discloses the claimed “assignment rule” limitations of claims 1 and 9, the Decision did not address the Petition’s analysis showing how Abbott also anticipates and renders obvious dependent claims 3, 5, 12, 13, 15, 20, and 21. Upon granting rehearing, the Board should evaluate the Petition’s

analysis showing how dependent claims 3, 5, 12, 13, 15, 20, and 21 are also anticipated by and rendered obvious over Abbott.

## **V. CONCLUSION**

For the above reasons, the Board should grant rehearing of the Decision, find claims 20 and 21 as being unpatentable over Sonohara, and find claims 1, 3, 5, 9, 12, 13, 15, 20, and 21 unpatentable over Abbott.

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**CERTIFICATE OF SERVICE**

The undersigned certifies, in accordance with 37 C.F.R. § 42.6, that service was made on the Patent Owner as detailed below.

*Date of service* January 17, 2024

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