

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

GOOGLE LLC,
Appellant

v.

PERSONAL AUDIO, LLC,
Cross-Appellant

2017-1162, 2017-1166, 2017-2110, 2017-2111

Appeals from the United States Patent and Trade-
mark Office, Patent Trial and Appeal Board in Nos.
IPR2015-00845, IPR2015-00846.

Decided: August 1, 2018

DAN L. BAGATELL, Perkins Coie LLP, Hanover, NH,
argued for appellant. Also represented by LANE M.
POLOZOLA, Seattle, WA; MATTHEW NOAH NICHOLSON,
Nicholson De Vos Webster & Elliott LLP, San Jose, CA;
JEANNINE YOO SANO, White & Case LLP, Palo Alto, CA.

VICTOR G. HARDY, Hardy Parrish Yang, LLP, Austin,
TX, argued for cross-appellant. Also represented by
MINGHUI YANG.

Before PROST, *Chief Judge*, BRYSON and O'MALLEY,
Circuit Judges.

BRYSON, *Circuit Judge*.

Google LLC appeals from two decisions of the Patent Trial and Appeal Board in inter partes review proceedings, each involving a patent owned by cross-appellant Personal Audio, LLC. In the first case, the Board held claims 1 and 4 of Personal Audio's U.S. Patent No. 6,199,076 ("the '076 patent") to be unpatentable for obviousness, but held claims 2, 3, 14, and 15 of the '076 patent to be patentable. In the second case, the Board held claims 1–4, 9, and 13 of U.S. Patent No. 7,509,178 ("the '178 patent") to be unpatentable for obviousness, but held claims 5–8, 14–17, 28, and 29 of the '178 patent to be patentable. Google appeals from the Board's non-obviousness decisions; Personal Audio cross-appeals from the Board's obviousness rulings. We affirm.

I

Both the '076 patent and the '178 patent are directed to an audio program and message distribution system in which a host system organizes and transmits program segments to a client. The claimed audio program player receives a sequence of programs to be played based on the listener's preferences. The program player also provides navigation tools that enable the user to navigate to other program segments or to the beginning of the currently playing segment.

Certain claims of the two patents recite a "skip backward" program selection command that, depending on the circumstances, either restarts the current program segment or begins playback of the previous segment. As recited by the claims and construed by the Board, the "skip backward" limitations of both patents disclose a

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computer algorithm that responds to one or more “back” commands in different ways depending on how long the current program has been playing. If the current program has played for at least a predetermined period of time, the “back” command will cause the system to reset to the beginning of the currently playing program. If the current program has not played for a predetermined amount of time, the “back” command will cause the system to begin playback of the immediately preceding segment in the playlist. For example, if the predetermined time is set at three seconds, and track 5 has been playing for three seconds or less, a “back” command would begin playback of track 4; if track 5 has been playing for more than three seconds, a “back” command would restart track 5.

Certain claims also recite “skip” and “go” commands. The “skip” command plays the audio segment that follows the currently playing segment. The “go” command permits the user to play a “listener-selected” audio program segment. Some claims also include the limitation that the player reproduces “selected audio program segments,” which the Board construed as “audio program segments that have been chosen by or for a user.” Similarly, some of the claims require that the sequence file be “personalized to the preferences” of the listener.

Google asserted four prior art references before the Board, of which three are relevant to this appeal. The first is U.S. Patent App. Pub. No. 2002/0177914 A1 (“Chase”), a published patent application that discloses a system for distributing nationally syndicated radio programs or national advertising campaigns to local radio stations. Chase describes an “affiliate terminal” in which the local radio station’s disc jockey can pause and play audio selections from the playlist provided by the national broadcaster, can go to the next or previous segment, and

can use up and down arrows to select and play a desired program from within the list.

The second prior art reference is an article written by Shoshana Loeb (“Loeb”). The Loeb reference describes a personalized music system called “LyricTime,” which can select audio files for playing based on a listener profile. The audio files in the LyricTime system can be transmitted to the listener’s computer, television, or other terminal with input capabilities. The system also provides the listener with the ability to play and pause the audio, and to navigate forward and backward through the selected audio files.

The third relevant prior art reference is U.S. Patent No. 4,811,315, entitled “Disc Player with Program Selection Control” (“Inazawa”). Inazawa, which describes a navigation system on a CD player, was introduced to show the “skip backward” limitations. Inazawa discloses a system that has two program selection keys, one to move forward and the other to move in reverse. On a single press of the “back” button, the device moves the optical head of the CD player to the beginning of the currently playing track. Inazawa, col. 6, ll. 17–29. If that button is pressed a second time within a period designated as t_3 , the optical head instead moves to the beginning of the previous track. *Id.*, col. 6, line 61, to col. 7, line 20. Otherwise, if that button is pressed a second time after the expiration of the t_3 time period, the optical head again moves to the beginning of the currently playing track. *Id.*, col. 7, ll. 21–31.

Importantly, after the first button press, there is a short reset period, identified as t_2 , which is the time that it takes for the optical head to move into the proper position at the beginning of the current track. *Id.*, col. 6, ll. 41–54. The reset time varies, depending on factors such as the distance between the current location of the

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optical head and its destination. As a result, the period designated as t_3 does not represent audio playback time, but rather begins running from the first press of the program selection key, and includes some amount of reset time during which no audio playback is occurring.

The Board held that the prior art rendered all of the limitations obvious except for the “skip backward” limitations. Google appeals from the Board’s conclusion that Inazawa does not render the “skip backward” limitations obvious. Personal Audio cross-appeals from the Board’s conclusions that Chase and Loeb render the claims containing the “skip” and “go” limitations obvious, that Chase and Loeb disclose “selected audio program segments,” and that there was a motivation to combine Chase and Loeb in a manner that would disclose that the audio is “personalized to the preferences” of the listener.

II

In its appeal, Google argues that Inazawa renders the claims containing the “skip backward” limitations obvious. Because substantial evidence supports the Board’s conclusion that Inazawa describes a fundamentally different algorithm that does not render the claimed algorithm obvious, we affirm.

First, Google argues that the time period t_3 disclosed in Inazawa constitutes a “predetermined amount of time” under the Board’s claim construction and therefore renders obvious the “skip backward” limitations in claims 5, 6, and 14 of the ’178 patent. The stipulated claim constructions, which were adopted by the Board, provide that the “skip backward” claim limitations either reset to the beginning of the current segment or the beginning of the previous segment depending on whether “the currently playing audio program file has played for a predetermined amount of time.”

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