

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

NONEND INVENTIONS N.V.,
Patent Owner.

Case IPR2016-00174
Patent 8,090,862 B2

Before MICHAEL W. KIM, JENNIFER S. BISK, and
DANIEL N. FISHMAN, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

Unified Patents Inc. (“Petitioner”), filed a Petition (Paper 2, “Pet.”) for *inter partes* review of claims 1–20 of U.S. Patent No. 8,090,862 B2 (“the ’862 patent”) (Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. Nonend Inventions N.V. (“Patent Owner”) filed a Patent Owner Preliminary Response (Paper 7, “Prelim. Resp.”). On May 12, 2016, based on the record before us at the time, we instituted an *inter partes* review of all challenged claims (1–20) of the ’862 patent. Paper 10 (“Dec.”). Specifically, we instituted that review on the following challenges to the claims:

References	Basis	Claims challenged
Shastri ¹	§ 102(e)	1–6 and 8–18
Goldszmidt ²	§ 103(a)	1–20
Goldszmidt and Lumelsky ³	§ 103(a)	1–20

Dec. 26.

After we instituted this review, Patent Owner filed a Patent Owner Response (Paper 14, “PO Resp.”) and Petitioner filed a Reply (Paper 17, “Pet. Reply”).⁴ Petitioner relies on the first Declaration of Dr. Charles

¹ U.S. Patent Application Publication No. 2002/0065922 A1; May 30, 2002. Ex. 1002 (“Shastri”).

² U.S. Patent No. 6,195,680 B1; Feb. 27, 2001. Ex. 1004 (“Goldszmidt”).

³ U.S. Patent No. 6,377,996 B1; Apr. 23, 2002. Ex. 1005 (“Lumelsky”).

⁴ Petitioner appears to have filed the Reply twice as Papers 17 and 18. As those papers appear to be identical, we will refer to Paper 17 only.

Eldering (Ex. 1006) and the second Declaration of Dr. Eldering (Ex. 1018).⁵ Patent Owner relies on the Declaration of Dr. John C. Hale (Ex. 2016).

Patent Owner filed a Motion to Exclude Evidence (Paper 20) to which Petitioner filed an Opposition (Paper 23).

We heard oral argument on February 8, 2017 (“Oral Hearing”). The record contains a transcript of the hearing (Paper 25, “Tr.”).

We have jurisdiction under 35 U.S.C. § 6. The evidentiary standard is preponderance of the evidence. *See* 35 U.S.C. § 316(e); *see also* 37 C.F.R. § 42.1(d). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

For the reasons expressed below, we conclude that Petitioner has met its burden to show, by a preponderance of the evidence, that claims 1–20 are unpatentable.

B. The ’862 Patent

According to the ’862 patent, “[s]ystems and methods are disclosed for streaming content over a network that enables communication between a first consumer node, a second consumer node, and a production node.” Ex. 1001, Abstract. The method involves processing, for play-back, part of an item of content received over a first connection, while another part of the item of content is being received over a second communication channel. *Id.* According to an embodiment, a first consumer node connects to a production node and commences receipt of a stream. *See id.* at 7:26–35. A

⁵ Petitioner appears to have filed the second Declaration of Dr. Eldering twice as Exhibits 1012 and 1018. Petitioner also filed a document labelled “Transcript of March 11, 2016 Conference” as Exhibit 1012. As Exhibits 1012 and 1018 appear to be identical, for the second Declaration of Dr. Eldering, we will refer only to Exhibit 1018.

second consumer node connects with both the production node and the first consumer node, tests whether the connection to the production node or to the first consumer node is the best, and selects the best node from which to receive the content. *See id.* at 7:44–48.

Figure 2C of the '862 patent depicts such a configuration and is reproduced below.

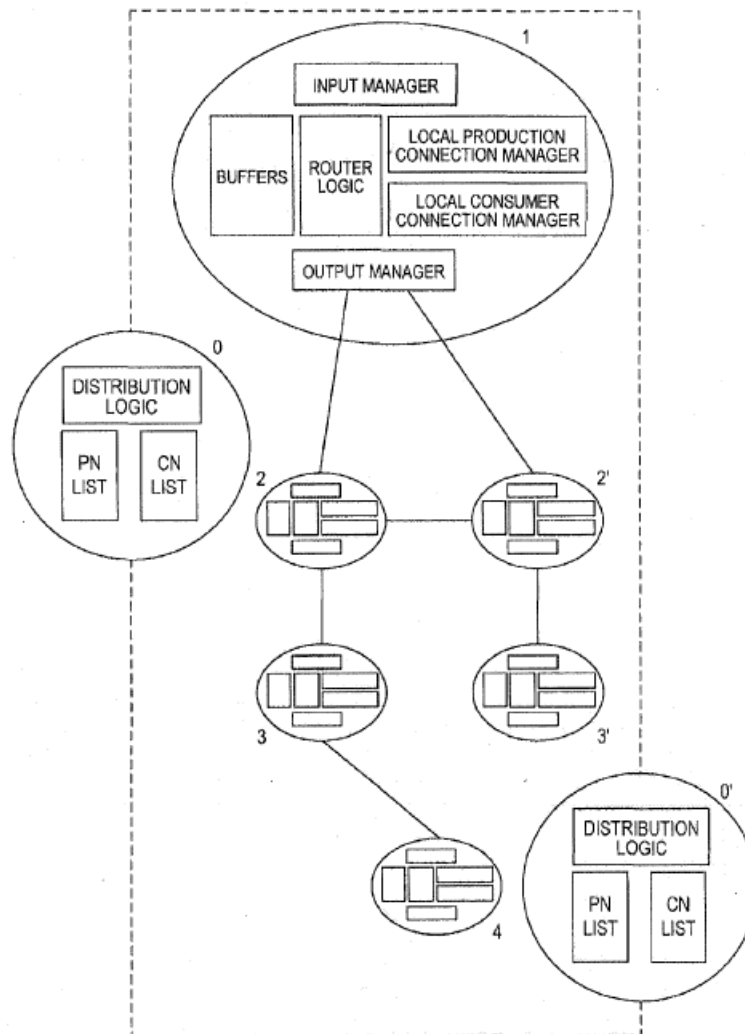


FIG. 2C

In Figure 2C (above), consumer nodes 2 and 2' are connected to production node 1, and are also connected to each other. Consumer node 2

initially receives a stream from production node 1. When consumer node 2 connects with production node 1, it is informed of the existence of consumer node 2', and that consumer node 2' can provide the requested content. While receiving the stream, consumer node 2 tests the connection with other nodes, such as consumer node 2', to determine if there is another node that can better supply the same stream (i.e., faster, better quality, etc.). If consumer node 2 detects a better node from which to receive the stream, it receives the stream through that other connection. *See, e.g.*, Ex. 1001, 8:62–9:22.

C. Related Matters

Patent Owner identifies several matters in litigation relating to the '862 patent, all in the Eastern District of Texas. Paper 6, 2–3.⁶ Petitioner identifies one related case (Pet. 1) that we presume, based on a similar case designation, is the same case Patent Owner identified as filed in the Eastern District of Texas involving Apple, Inc.

D. Illustrative Claim

Independent claim 1, reproduced below, is exemplary of the invention:

1. A method for receiving data packages of a streaming item of content at a receiving media player, using at least two communication channels, the method comprising:

receiving one or more data packages corresponding to at least a part of the item of content over a first communication channel operationally coupled to the receiving media player;

⁶ Paper 6 does not have page numbers. We treat the first page as page number 1 and number the pages consecutively from there.

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