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Paper 27
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

AFFINITY LABS OF TEXAS, LLC,
Patent Owner.

Case IPR2017-00122
Patent 9,444,868 B2

Before KEVIN F. TURNER, LYNNE E. PETTIGREW, and JON B. TORNQUIST, *Administrative Patent Judges.*

TORNQUIST, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Netflix, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting *inter partes* review of claims 1–20 of U.S. Patent No. 9,444,868 B2 (Ex. 1001, "the '868 patent"). Affinity Labs of Texas, LLC ("Patent Owner") filed a Preliminary Response to the Petition (Paper 8, "Prelim. Resp.").

Upon consideration of the Petition and the Preliminary Response, we determined that Petitioner had demonstrated a reasonable likelihood that it would prevail with respect to claims 1–20 of the '868 patent. Paper 10, 16 ("Institution Decision" or "Inst. Dec."). Thus, we instituted *inter partes* review with respect to those claims. *Id.*

Following the institution of trial, Patent Owner filed a Patent Owner Response (Paper 12, "PO Resp.") that was essentially identical to its Preliminary Response, and Petitioner filed a Reply (Paper 13, "Pet. Reply"). An oral hearing was held on December 21, 2017, and a transcript of the oral hearing is included in the record. Paper 26 ("Tr.").

In support of its arguments, Petitioner relies upon the declaration testimony of Dr. Nader Mir (Ex. 1007). Patent Owner did not submit declaration testimony in support of its Preliminary Response or Patent Owner Response.

We have jurisdiction under 35 U.S.C. § 6, and this Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

B. Related Proceedings

The parties note that the '868 patent, as well as related U.S. Patent No. 9,094,802 ("the '802 patent"), are at issue in *Affinity Labs of Texas, LLC v. Netflix, Inc.*, 1:15-cv-849-RP (W.D. Tex.). Pet. 3; Paper 7, 1. The parties

further note that the '802 patent is at issue in IPR2016-01701. Pet. 3; Paper 7, 1.

C. The '868 Patent

The '868 patent is directed to a delivery system for digitally stored content, including audio, video, and textual information. Ex. 1001, 1:25–27, 3:20–22, 3:52–57. The '868 patent instructs that this information may be "formatted, segmented, compressed, modified, etc." during communication to a user. *Id.* at 3:28–31. In one embodiment of the '868 patent, the selected audio information may be wirelessly communicated using a "hybrid of wireless communication rates." *Id.* at 6:12–15. In this method, "the selected audio information may first be transmitted to the electronic device via high-speed communication until enough information" is buffered into the memory of a recipient device. *Id.* at 6:12–19. Slower communication speeds may then be used to communicate additional selected audio information to the device. *Id.* at 6:19–22.

D. Illustrative Claim

Claim 1 is illustrative of the challenged claims and is reproduced below:

1. A media system, comprising:

a plurality of independent segment files, wherein a given segment file of the plurality of independent segment files has a given format and a different segment of the plurality of independent segment files has a different format, further wherein the given format facilitates an outputting of information in the given segment file at a given rate that is different than a rate associated with the different format;

a playlist that comprises a list, and the list includes a first URL for the given segment file and a different URL for the different segment file;

> a network-based communication system operable: to distribute media content to a remotely located requesting device; to receive an HTTP communication from the remotely located requesting device that indicates a desire to access the available media; to send information representing the playlist to the remotely located requesting device; to send information representing the given segment file to the remotely located requesting device; and, to send information representing the different segment file to the remotely located requesting device; and
>
> a plurality of remote devices configured to request media, wherein each of the plurality of remote devices comprises: (1) an internal memory system; (2) a collection of instructions stored in the internal memory system that is operable when executed to utilize information representing the playlist, to request a streaming delivery of the information representing the given segment file, and to request a streaming delivery of the information representing the different segment file; and (3) a buffer configured to output the information representing the given segment file at the given rate and to output information representing the different segment file at the rate, which is different than the given rate

Ex. 1001, 18:56–19:24.

E. Instituted Grounds of Unpatentability

We instituted trial on the following grounds (Inst. Dec. 16):

References	Basis	Claims Challenged
Treyz[1] and Fuller[2]	§ 103	1–12, 14, 15, and 17–20
Treyz, Fuller, and Glaser[3]	§ 103	13 and 16

[1] US 6,678,215 B1, issued Jan. 13, 2004 (Ex. 1015).
[2] US 6,711,622 B1, issued Mar. 23, 2004 (Ex. 1016).
[3] US 6,985,932 B1, issued Jan. 10, 2006 (Ex. 1017).

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, "[a] claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears." 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142 (2016) (upholding the use of the broadest reasonable interpretation standard). In determining the broadest reasonable construction, we presume that claim terms carry their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). A patentee may define a claim term in a manner that differs from its ordinary meaning; however, any special definitions must be set forth in the specification with reasonable clarity, deliberateness, and precision. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Petitioner proposes constructions for the terms "segment files," "cellular telephone," and "a different segment"/"the given segment." Pet. 7–9. Patent Owner does not propose express constructions for the terms identified by Petitioner or any additional claim terms.

Upon review of the record as a whole, we determine that the terms "available media" and "segment file" require express construction.

available media

Independent claims 1, 7, and 14 require an "available media." Ex. 1001, 19:5, 19:49–50, 20:54. In IPR2014-00407, which was directed to related U.S. Patent No. 8,359,007 ("the '007 patent"), we construed "an available media" to mean "content accessible from a source of audio, video, and/or textual information, such as songs or stations in a playlist," but noted that the term is "not limited to a single file, song, or video, and may

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