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Paper 10
Entered: April 26, 2017

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*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Netflix, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting an *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.").

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted "unless the Director determines . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

After considering the Petition and the Preliminary Response, we determine that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to claims 1–20 of the '868 patent. Accordingly, we institute *inter partes* review with respect to those claims.

A. 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.

B. 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, 3:20–25. The '868 patent instructs that information may be "formatted, segmented, compressed, modified, etc. for the purpose of providing or

communicating" the information to a user. *Id.* at 3:25–33. In one embodiment of the '868 patent, the selected audio information may be wirelessly communicated using a "hybrid of wireless communication rates." *Id.* at 6:12–22. 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 6:15–19. Slower communication speeds may then be used to communicate additional selected audio information to the device. *Id.* at 6:19–22.

C. Illustrative Claims

Claims 1 and 2 are illustrative of the challenged claims and are 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.

> 2. The media system of claim 1, wherein at least one of the plurality of remote devices is a portable handheld device having a display, and the available media is a video.

Id. at 19:25–27.

D. The Asserted Grounds of Unpatentability

Petitioner contends that claims 1–20 of the '868 patent are unpatentable based on the following grounds (Pet. 12–66):[1]

References	Basis	Claims Challenged
Treyz[2] and Fuller[3]	§ 103	1–12, 14, 15, and 17–20
Treyz, Fuller, and Glaser[4]	§ 103	13 and 16

[1] Petitioner also relies on a declaration from Dr. Nader Mir (Ex. 1007).
[2] U.S. Patent No. 6,678,215 B1, issued Jan. 13, 2004 (Ex. 1015).
[3] U.S. Patent No. 6,711,622 B1, issued Mar. 23, 2004 (Ex. 1016).
[4] U.S. Patent No. 6,985,932 B1, issued Jan. 10, 2006 (Ex. 1017).

Petitioner asserts that Treyz, Fuller, and Glaser are prior art under 35 U.S.C. § 102(e). Pet. 6. Patent Owner does not, at this stage of the proceeding, challenge the prior art status of any reference.

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 contest Petitioner's proposed constructions in the Preliminary Response or propose its own constructions for any additional terms.

Upon review of the parties' arguments and supporting evidence, we determine that only the term "available media" requires express construction for purposes of this Decision. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) ("[O]nly those terms need be

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