

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STINGRAY DIGITAL GROUP INC.,
Petitioner,

v.

MUSIC CHOICE,
Patent Owner.

Case IPR2017-01192
Patent 8,769,602 B1

Before MITCHELL G. WEATHERLY, GREGG I. ANDERSON, and
JOHN F. HORVATH, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. BACKGROUND

Stingray Digital Group Inc. (“Petitioner”) filed a petition (Paper 2, “Pet.”) to institute an *inter partes* review of claims 1–11 (the “challenged claims”) of U.S. Patent No. 8,769,602 B1 (Ex. 1001, “the 602 patent”). 35 U.S.C. § 311. Petitioner supported the Petition with a Declaration from Michael Shamos, Ph.D (Ex. 1003). Music Choice (“Patent Owner”) timely

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filed a Preliminary Response. Paper 5 (“Prelim. Resp.”). On October 19, 2017, based on the record before us at the time, we instituted an *inter partes* review of claims 1–11. Paper 6 (“Institution Decision” or “Dec.”). We instituted the review on the following challenges to the claims:

References	Basis	Claims challenged
International Patent Publication WO 00/19662 A1 (Ex. 1004, “Mackintosh”)	§ 102(b)	1–7
Mackintosh and Hallier, J., Multimedia Broadcasting to mobile, portable and fixed Receivers using the Eureka 147 Digital Audio Broadcasting System; 5th IEEE Int’l Symposium on Personal, Indoor and Mobile Radio Comm., 794-99 (Sept. 18–22, 1994) (The Hague, The Netherlands) (Ex. 1005, “Hallier”)	§ 103	8–11

After we instituted this review, Patent Owner filed a Patent Owner Response in opposition to the Petition (Paper 16, “PO Resp.”) that was supported by a Declaration from Samuel Russ, Ph.D. (Ex. 2004). Petitioner filed a Reply in support of the Petition (Paper 20, “Reply”) that was supported by a Reply Declaration of Michael Shamos, Ph.D (Ex. 1008). Patent Owner did not move to amend any claim of the ’602 patent.

We heard oral argument on July 16, 2018. A transcript of the argument has been entered in the record (Paper 27, “Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). The evidentiary standard is a preponderance of the evidence. *See* 35 U.S.C. § 316(e); 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 demonstrated by a preponderance of evidence that claims 1–11 are unpatentable.

B. RELATED PROCEEDINGS

The parties identified as a related proceeding the co-pending district court litigation of *Music Choice v. Stingray Digital Group, Inc.*, No. 2:16-cv-00586-JRG-RSP (E.D. Tex. June 6, 2016) (the “DC Litigation”). Pet. 1; Paper 4, 2. Patent Owner identifies a number of other applications, patents, or proceedings as being related to this proceeding, including:

1. *Stingray Digital Group Inc. v. Music Choice*, Case IPR2017-01193 (PTAB), involving related U.S. Patent No. 9,357,245 B1;
2. U.S. Patent Application Serial Number 60/315,046, filed on August 28, 2001 (Expired);
3. U.S. Patent Application Serial Number 10/066,793, issued as U.S. Patent No. 7,275,256 B1 on September 25, 2007;
4. U.S. Patent Application Serial Number 11/837,772, issued as U.S. Patent No. 7,926,085 B2 on April 12, 2011;
5. U.S. Patent Application Serial Number 14/314,379, issued as U.S. Patent No. 9,451,300 B1 on September 20, 2016;
6. U.S. Patent Application Serial Number 14/635,619, issued as U.S. Patent No. 9,357,245 B1 on May 31, 2016; and
7. U.S. Patent Application Serial Number 15/266,799, filed on September 15, 2016 (Pending).

Paper 4, 2–3.

C. THE '602 PATENT

The '602 patent is directed toward a system and method for providing an interactive, visual complement to one or more audio programs. Ex. 1001, Abstract. Figure 1 of the '602 patent is reproduced below.

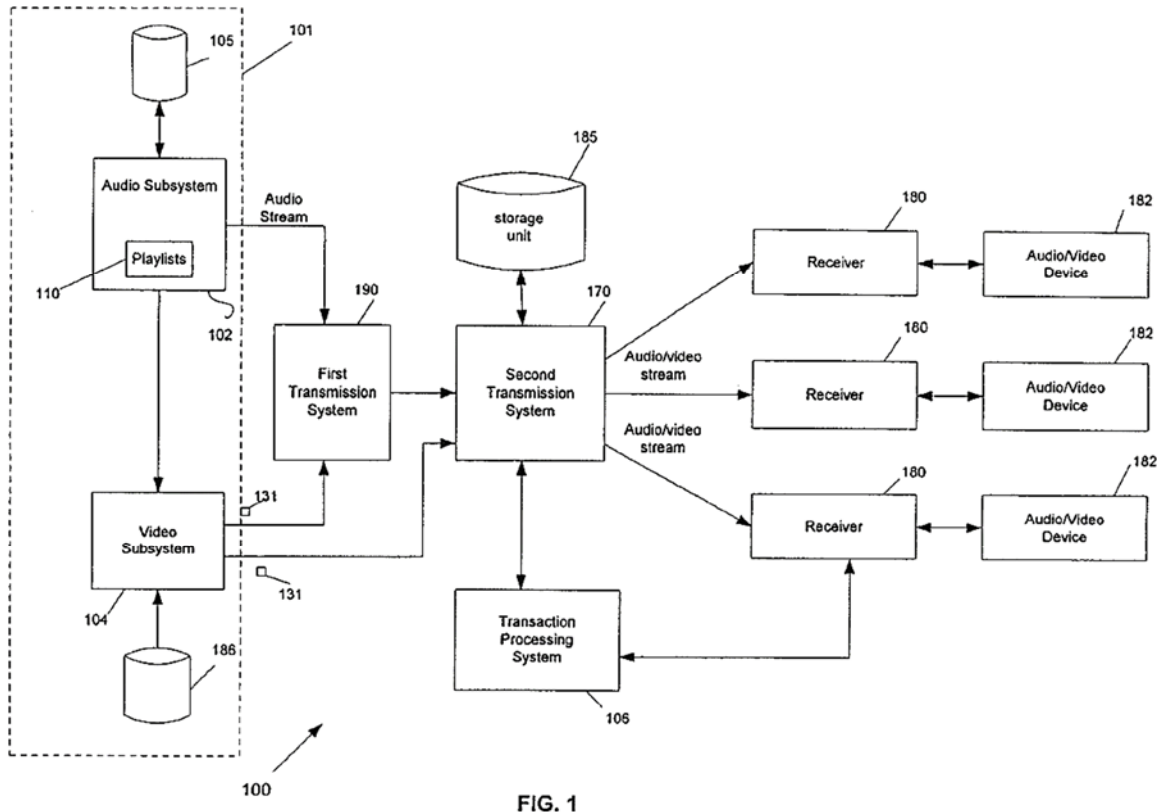


Figure 1 is a block diagram of audio/video system 100 for providing audio/video programming to consumers. *Id.* at 2:58–60. System 100 includes audio subsystem 102 having playlist 110, video subsystem 104, first transmission system 190, second transmission system 170, receivers 180, and audio/video devices 182. *Id.* at 4:6–32. Playlist 110 contains programmed sound recordings for transmission to listeners of system 100 over a particular broadcast channel, and is typically generated on a periodic basis (e.g., daily or weekly). *Id.* at 4:7–12. Audio subsystem 102 transmits the programmed sound recordings to transmission subsystem 190,

which further transmits the recordings to signal transmission system 170, which transmits the recordings to audio/video receivers 180. The latter are coupled to audio/video devices 182 that reproduce the sound recordings for system subscribers. *Id.* at 4:18–30. Audio/video receivers 180 may be, e.g., set-top boxes, and audio/video devices 182 may be, e.g., televisions. *Id.* at 4:30–32.

Video subsystem 104 generates a data packet for the channel over which the sound recording is broadcast upon receiving a trigger from audio subsystem 102. Ex. 1001, 4:33–35, 6:28–33. The trigger identifies the sound recording, information about the sound recording, and the channel broadcasting the sound recording. *Id.* at 6:28–33. The generated data packet contains a video image specification that specifies a visual complement to the audio broadcast. *Id.* at 4:35–39. The video image specification includes one or more visual media asset identifiers, where visual media assets can be graphic images, videos, text messages, and other media assets. *Id.* at 4:41–48. For example, the video image specification may include the name of the song, artist, and album associated with the song broadcast by transmission system 170. *Id.* at 4:50–63. The video image specification “*may* also specify the screen position where each identified asset is to be displayed” on a subscriber’s screen. *Id.* at 4:43–45 (emphasis added). The data packet containing the video image specification may be an XML or HTML file. *Id.* at 5:28–36. Once generated, the data packet is transmitted from video subsystem 104 to transmission system 170. *Id.* at 5:37–44.

Transmission system 170 parses the data packet received from video subsystem 104, and using the information contained in the video image specification, generates and transmits a video image to audio/video

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