

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*.

DECISION

Instituting *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. §§ 42.4, 42.108

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. Music Choice (“Patent Owner”) timely filed a Preliminary

Response. Paper 5 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute when “the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); 37 C.F.R. § 42.108. Based on our review of the record, we conclude that Petitioner is reasonably likely to prevail with respect to at least one of the challenged claims.

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. §§ 102 and/or 103 based on the following grounds (Pet. 9–60):

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

Generally, Patent Owner contends that the Petition should be denied in its entirety. For the reasons described below, we institute an *inter partes* review of all claims on all challenges to patentability.

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). Pet. 1; Paper 4, 2. Patent Owner

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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.

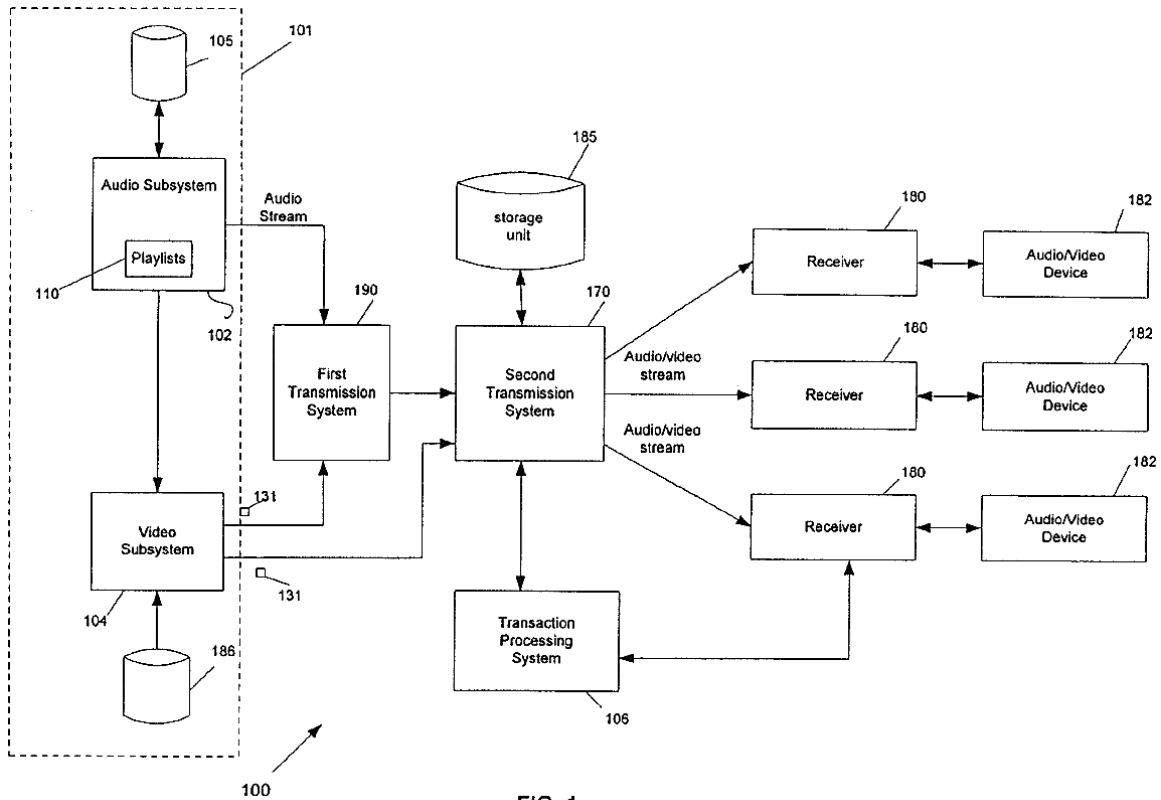


FIG. 1

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 can contain 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 receivers 180. *Id.* at 5:60–67. The video image is then sent to and displayed by audio/video devices 182. *Id.* at 6:1–3. To generate the video image from the video image specification, transmission system 170 preferably has access to storage unit 185 containing those visual media assets identified by visual

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