

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STINGRAY DIGITAL GROUP, INC.,
Petitioner,

v.

MUSIC CHOICE,
Patent Owner.

Case IPR2017-01193
Patent 9,357,245 B1

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

HORVATH, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Stingray Digital Group, Inc., (“Petitioner”) filed a Petition (Paper 1, “Pet.”) to institute *inter partes* review of claims 1–9, 12–14, 16, and 17 (“the challenged claims”) of U.S. Patent No. 9,357,245 B1 (Ex. 1001, “the ’245 patent”). Music Choice (“Patent Owner”) filed a Preliminary Response (Paper 5, “Prelim. Resp.”).

Upon consideration of the Petition and Preliminary Response, we are persuaded, under 35 U.S.C. § 314(a), that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the challenged claims of the ’245 patent. Accordingly, we institute an *inter partes* review of all challenged claims.

B. Related Matters

Petitioner identifies the following as matters that could affect, or be affected by, a decision in this proceeding: *Music Choice v. Stingray Digital Group, Inc.*; Case No. 2:16-cv-00586-JRG-RSP (E.D. Tex.); *Stingray Digital Group, Inc. v. Music Choice*, Case No. IPR2017-01192 (challenging the patentability of U.S. 8,769,602 (“the ’602 patent”), from which the ’245 patent descends. Pet. 1. Patent Owner identifies the same matters, as well as U.S. Patent Nos. 7,275,256, 7,926,085, 8,769,602, and 9,451,300, from which the ’245 patent also descends. Paper 3, 2–3.

C. Evidence Relied Upon

Reference		Publication Date	Exhibit
Mackintosh	WO 00/19662	Apr. 6, 2000	Ex. 1004

Petitioner also relies upon the Declaration of Michael Shamus, Ph.D. (Ex. 1003).

D. Asserted Ground of Unpatentability

Petitioner asserts the following ground of unpatentability:

Ground	Reference(s)	Basis	Claims Challenged
1	Mackintosh	§ 102(b)	1-9, 12-14, 16, and 17

II. ANALYSIS

A. The '245 Patent

The '245 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 '245 patent is reproduced below.

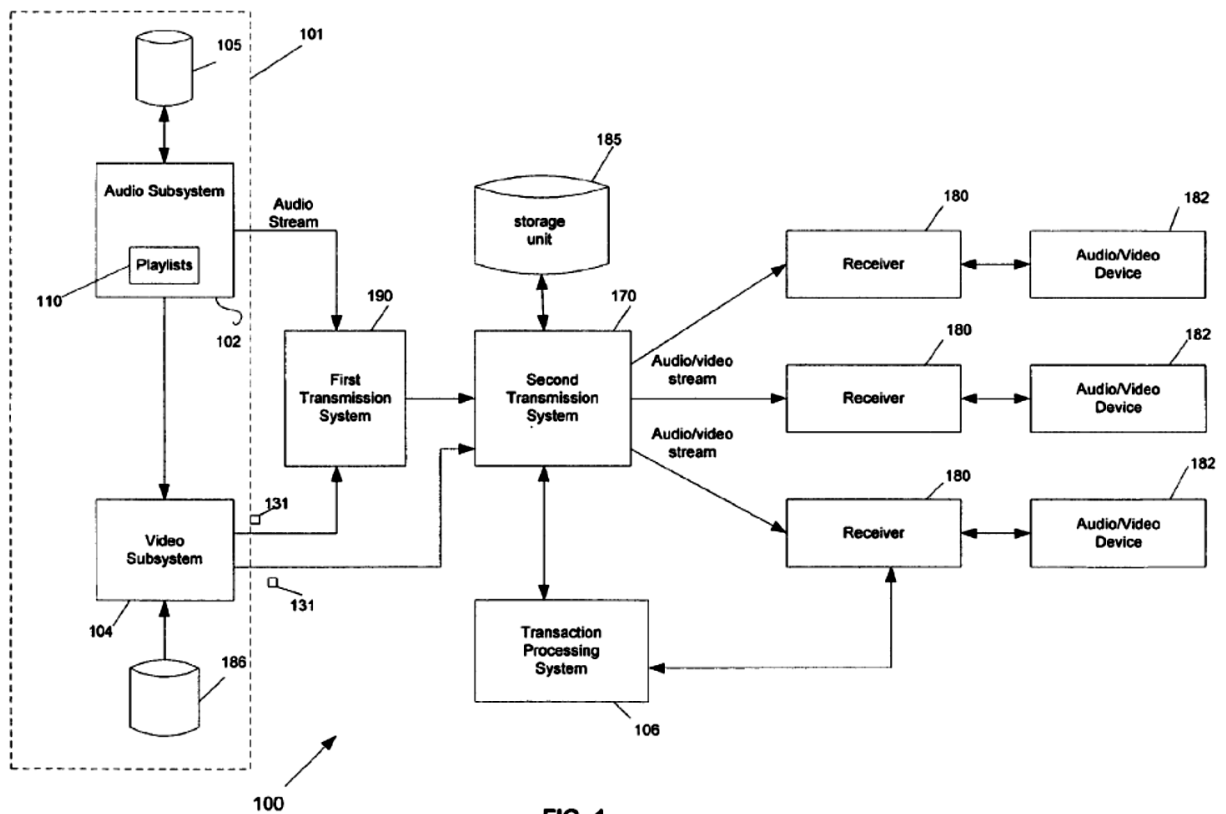


FIG. 1

Figure 1 is a block diagram of audio/video system 100 for providing audio/video programming to consumers. *Id.* at 2:63–65. 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 4:10–36. 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 4:11–16. 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 4:22–34. Audio/video receivers 180 may be, e.g., set-top boxes, and audio/video devices 182 may be, e.g., televisions. *Id.* at 4:34–36.

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, 4:37–39, 6:30–35. The trigger identifies the sound recording, information about the sound recording, and the channel broadcasting the sound recording. *Id.* at 6:30–35. The generated data packet contains a video image specification that specifies a visual complement to the audio broadcast. *Id.* at 4:39–44. 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 4:45–52. 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 4:54–67. 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 4:47–49 (emphasis added). The data packet containing the video image specification can contain an XML or HTML file. *Id.* at 5:31–39. Once generated, the data packet is transmitted from video subsystem 104 to transmission system 170. *Id.* at 5:40–47.

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. Ex. 1001, 5:63–6:2. The video image is then sent to and displayed by audio/video devices 182. *Id.* at 6:2–3. 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 media asset identifier in the video image specification. *Id.* at 5:48–56. Alternatively, the visual media assets can be stored in storage unit 186 of video subsystem 104, and video subsystem 104 can transmit the visual media assets to transmission system 170. *Id.* at 5:57–62.

The video image generated by transmission system 170 can include a user selectable “buy” button. Ex. 1001, 7:34–40. A user, selecting the “buy” button, can initiate an e-commerce transaction with transaction processing system 106. *Id.* at 7:64–67. The selection causes a message to be sent from the user’s audio/video receiver 180 to transaction processing system 106 containing an identifier of the product (e.g., song, album) the user wants to purchase. *Id.* at 8:10–15.

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