

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLING TV, L.L.C.
Petitioner

v.

UNILOC 2017 LLC,
Patent Owner

IPR2019-01363
Patent 9,721,273 B2

Before KEVIN F. TURNER, JENNIFER S. BISK, and
NEIL T. POWELL, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision on Remand
Determining All Challenged Claims Unpatentable
35 U.S.C. §§ 144, 318

INTRODUCTION

We address this case on remand after a decision by the U.S. Court of Appeals for the Federal Circuit in *Sling TV, L.L.C. v. Uniloc 2017 LLC*, No. 2021-1651, 2022 WL 306468 (Fed. Cir. Feb. 2, 2022).

A. Background

On July 19, 2019, Sling filed a Petition requesting *inter partes* review of claims 1–3 of U.S. Patent No. 9,721,273 B2 (Ex. 1001, “the ’273 patent”). Paper 1 (“Pet.”). Uniloc filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). On January 15, 2020, we instituted *inter partes* review pursuant to 35 U.S.C. § 314 as to all challenged claims. Paper 7 (“Dec. on Inst.”).

Following institution, Uniloc filed a Patent Owner Response. Paper 12 (“PO Resp.”). Sling then filed a Reply. Paper 14 (“Reply”). Uniloc followed with a Sur-Reply. Paper 15 (“Sur-Reply”). We held an oral argument on October 14, 2020. A transcript of the oral hearing (“Tr.”) has been entered into the record as Paper 28. Following the oral hearing, we authorized additional briefing on claim construction with respect to the claim phrase “no data representing content of the second collection of presentations” as recited by claims 1 and 2 and its applicability to the asserted prior art, and the parties filed briefs in accordance with that order. *See* Papers 25–27.

On December 28, 2020, following consideration of the full record developed during trial, we issued a Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73 pursuant to 35 U.S.C. § 315(d). Paper 29 (“Final Dec.”). In the Final Written Decision, we concluded that

Sling had not established by a preponderance of the evidence that claims 1–3 are unpatentable on the asserted grounds. *Id.*

Sling appealed to the Federal Circuit (Paper 30). In a decision issued on February 2, 2022, the Federal Circuit held that “[b]ecause the Board’s claim construction excludes a preferred embodiment and is inconsistent with the specification’s description of the invention, it is incorrect” and vacated and remanded our Decision for further proceedings. *Uniloc*, 2022 WL 306468, at *3.

The parties presented the panel with a proposed briefing schedule on remand and the panel granted the request. Ex. 3001. In compliance with that schedule, Sling filed an Opening Brief on Remand (Paper 31, “Pet. Opening Remand Br.”), Uniloc filed a Response (Paper 36, “PO Resp. Remand Br.”), Sling filed a Reply (Paper 37, “Pet. Reply Remand Br.”), and Uniloc filed a Sur-Reply (Paper 38, “PO Sur-Reply Remand Br.”).

For the reasons discussed below, after considering the post-remand briefing, as well as the record previously developed during trial and the Federal Circuit’s decision, we conclude that Sling has shown by a preponderance of the evidence that claims 1–3 are unpatentable.

B. Related Proceedings

The parties identify several district court cases involving the ’273 patent. Pet. v; Prelim. Resp. 2. With its Response, Patent Owner filed a *Markman* ruling issued by the Central District of California on March 9, 2020. Ex. 2001 (*Markman* ruling in *Uniloc 2017 LLC v. Netflix, Inc.*, 8:18-cv-02055).

C. The Claimed Invention

The '273 patent, titled System and Method for Aggregating and Providing Audio and Visual Presentations Via a Computer Network, issued August 1, 2017. Ex. 1001, codes (45), (54). It addresses the problem of locating content on the Internet for the purpose of business productivity and consumer education and entertainment. *Id.* at 1:51–55, 2:6–10. In particular, the '273 patent discusses storing and aggregating audio/visual presentation data for delivery via a computer network using a common web page. *Id.* at 2:15–3:11.

Figure 2 is reproduced below.

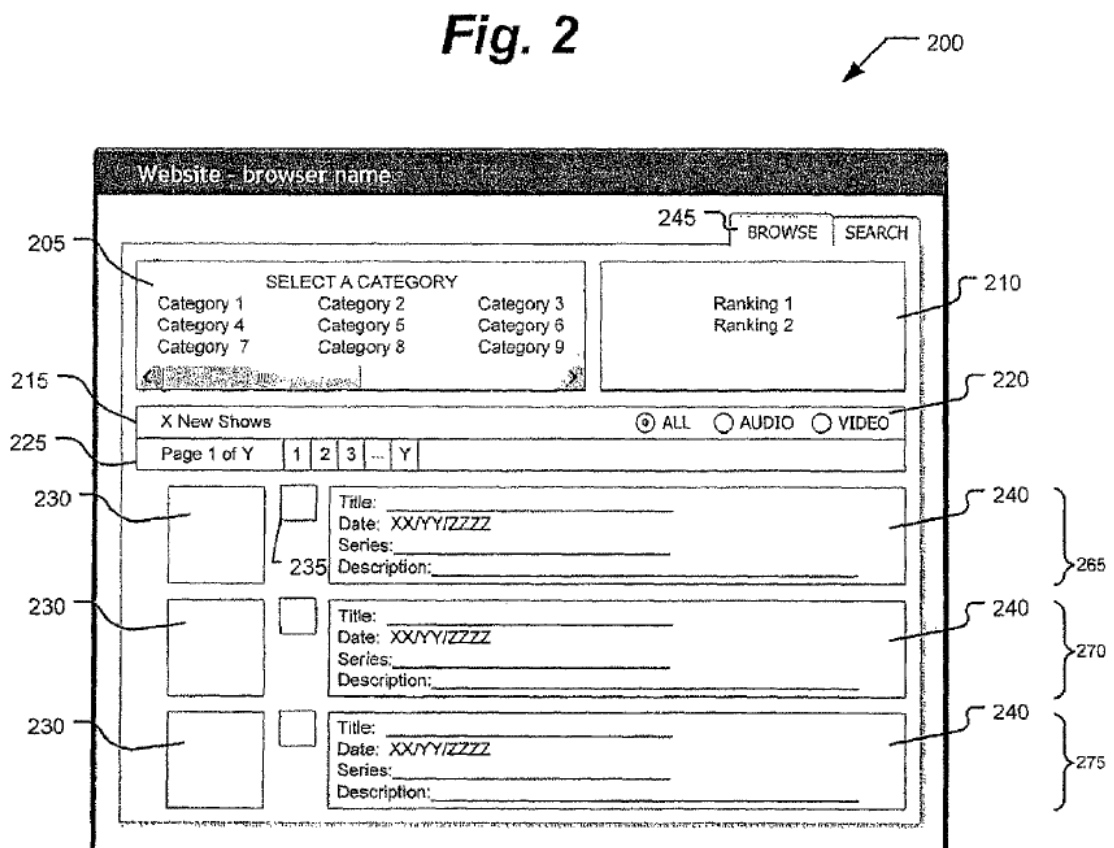


Figure 2 “illustrates an electronic document according to an embodiment of the present invention.” *Id.* at 3:22–23. Web page 200 “aggregates audio

and/or video content for presentation to users of computers 20.” *Id.* at 5:4–6. It displays a row for each of three presentations 265, 270, and 275, each row including particular content graphics 230, particular content information 240, and indicator 235. *Id.* at 5:16–20. “A user may select such a presentation for display by selecting an individual presentation for streaming or downloading, such as by clicking on an indicator” *Id.* at 5:20–23.

The ’273 patent describes an embodiment, process 800, which is “suitable for automatically aggregating and linking to presentations housed elsewhere in memory so as to be accessible to a [user’s computer] via [a] network.” *Id.* at 10:56–62. According to the ’273 patent, “Really Simple Syndication (‘RSS’) is a family of [standardized] Internet feed formats used to publish content that may be frequently updated, such as podcasts (RSS 2.0).” *Id.* at 10:64–66. An RSS document is sometimes referred to as a “feed” or “channel.” *Id.* at 10:66–11:1. The ’273 patent explains that its embodiments use RSS standard 2.0. *Id.* at 10:66–67 (“RSS utilizes a standardized format.”), 11:14–16 (“Embodiments of the present invention will be discussed with regard to RSS 2.0 feeds for non-limiting purposes of explanation only.”). RSS 2.0 discloses that the standard RSS feed includes any number of elements, each of which includes metadata, specifically either title or description. Ex. 1011, 1, 2, 4 (“All elements of an item are optional, however at least one of title or description must be present.”); *see also* Ex. 1002 ¶ 69.

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