UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC.,
AMAZON.COM SERVICES LLC,
AMAZON WEB SERVICES, INC., and
AUDIBLE, INC.,
Petitioners,

v.

AUDIO POD IP, LLC,
Patent Owner.

Case No. IPR2025-00774
U.S. Patent No. 8,738,740

PETITION FOR *INTER PARTES* REVIEW OF CLAIMS 1-6, 10, 11, AND 18 OF U.S. PATENT NO. 8,738,740

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TABLE OF EXHIBITS

Exhibit No.	Description
1001	U.S. Patent No. 8,738,740 ("the '740 patent")
1002	Declaration of Professor Ketan Mayer-Patel, Ph.D.
1003	NATIONAL INFORMATION STANDARDS ORGANIZATION, SPECIFICATIONS FOR THE DIGITAL TALKING BOOK (ANSI/NISO Z39.86-2002) (2002) ("DTB")
1004	European Patent Publication No. EP 1463258 A1 ("Lindahl")
1005	U.S. Patent Publication No. 2002/0069218 ("Sull")
1006	Yoshimura et al., *Content Delivery Network Architecture for Mobile Streaming Service Enabled by SMIL Modification*, 86 IEICE TRANSACTIONS ON COMMC'N 1778 (2003) ("Yoshimura")
1007	Excerpts from DICK C.A. BULTERMAN & LLOYD RUTLEDGE, SMIL 2.0, INTERACTIVE MULTIMEDIA FOR WEB AND MOBILE DEVICES (2004) ("Bulterman")
1008	U.S. Patent No. 6,477,522 ("Young")
1009	U.S. Patent Publication No. 2003/0061305 ("Copley")
1010	U.S. Patent No. 7,191,215 ("Ganesan")
1011	PCT Patent Publication No. WO2003/069437 ("Seed")
Exhibit Numbers 1012-1027 Not Used	
1028	U.S. Patent Publication No. 2002/0184189 ("Hay")
Exhibit Number 1029 Not Used	
1030	U.S. Patent No. 6,260,011 ("Heckerman")
Exhibit Number 1031 Not Used	

Exhibit No.	Description
1032	U.S. Patent No. 6,108,703 ("Leighton")
1033	U.S. Patent No. 5,922,045 ("Hanson")
Exhibit Number 1034 Not Used	
1035	U.S. Patent Publication No. 2004/0148638 ("Weisman")
Exhibit Numbers 1036-1040 Not Used	
1041	PCT Patent Publication No. WO2005/010776 ("Kate")
1042	U.S. Patent No. 5,991,810 ("Shapiro")
Exhibit Numbers 1043-1051 Not Used	
1052	U.S. Patent Publication No. 2006/0236219 ("Grigorovitch")
Exhibit Numbers 1053-1079 Not Used	
1080	U.S. Patent Publication No. 2003/0091338 ("Snow")
1081	Dilley et al., *Globally Distributed Content Delivery*, 6 IEEE INTERNET COMPUTING 50 (2002) ("Dilley")
1082	Crovella et al., *Dynamic Server Selection in the Internet*, PROC. 3RD WORKSHOP ON HIGH PERFORMANCE SUBSYSTEMS (HPCS '95) (1995) ("Crovella")
1083	U.S. Patent Publication No. 2001/0041062 ("Ottesen")
1084	U.S. Patent Publication No. 2004/0052371 ("Watanabe")
1085	U.S. Patent Publication No. 2002/0147979 ("Corson")
1086	PCT Patent Publication No. WO2001/24474 ("Shteyn")
1087	U.S. Patent No. 6,175,869 ("Ahuja")
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1089	Fei et al., *A Novel Server Selection Technique for Improving the Response Time of a Replicated Service*, PROC. IEEE CONF. ON COMPUTER COMMC'NS (INFOCOM '98) ("Fei")
1090	Excerpts from T. KENNEDY & M. SLOWINSKI, SMIL: ADDING MULTIMEDIA TO THE WEB (2001) ("Kennedy")
Exhibit Number 1091 Not Used	
1092	Maino, *Providing X.509-Based User Access Control to Web Servers*, 14TH INT'L INFO. SEC. CONF. (IFIP/SEC '98) (1998) ("Maino")
1093	U.S. Patent No. 6,226,752 ("Gupta")
1094	U.S. Patent No. 6,505,238 ("Tran")
1095	File History for U.S. Patent No. 8,738,740
1096	CV of Professor Ketan Mayer-Patel, Ph.D.
1097	Declaration of Sylvia D. Hall-Ellis, Ph.D.

Petitioners Amazon.com, Inc., Amazon.com Services LLC, Amazon Web Services, Inc., and Audible, Inc. ("Petitioners" or "Amazon") request *inter partes* review of claims 1-6, 10-11, and 18 of U.S. Patent No. 8,738,740 ("the '740 patent"), which Audio Pod IP, LLC ("Patent Owner" or "PO") purportedly owns.

I. INTRODUCTION

The challenged claims relate to downloading two portions of an audio stream from two different servers. The claims require downloading a first audio file from a first server and then selecting, based on server performance statistics, a second server for downloading a second audio file. But these steps were described in many references and were conventional in content distribution networks ("CDNs") by the '740 patent's earliest possible priority date in December 2005. The challenged claims should be cancelled.

II. BACKGROUND AND STATE OF THE ART

A. Selecting Servers Based on Performance Statistics Was Known.

By the 1990s, CDNs distributed content from multiple servers. (EX-1002 ¶32.) CDNs routed client requests to the optimal server using server performance statistics such as the time for information to travel between a server and client, packet loss, bandwidth, and/or server load. (*Id.*; EX-1081, 51; EX-1082, 1.) This process

was often handled by domain name system ("DNS") servers that map a request to the identified server(s). (EX-1002 ¶32; EX-1081, 52.)

In 2002, Young disclosed routing media content requests to an optimal server based on performance statistics. (EX-1002 ¶33.) After making a request, the client obtains a list of servers having the requested content and ranks those servers based on performance statistics. (EX-1008, Abstract.) The client then downloads a portion of the content from each listed server, re-ranks the servers based on download performance, and then chooses the optimal server for downloading the remainder of the content. (*Id.*) If the chosen server's performance drops below a threshold, the next best server is selected. (*Id.*)

Similar server-selection processes were described in Leighton (EX1032), Copley (EX-1009, Abstract), and Seed (EX-1011 ¶[0024]), among many other references. (EX-1002 ¶34.) The '740 patent acknowledges that automatically selecting a second server was known. (EX-1001, 10:58-67.)

B. Storing Media Content in Segments Was Known.

Segmenting a media file into smaller files was well known by 2005, as the '740 patent admits. (EX-1001, 2:16-18 (audiobook segmented into 24 files).) Such segmentation was described in many references. (EX-1080 ¶¶[0027], [0029] (file "sliced into smaller playback files"); EX-1030, 13:14-27 (audio file divided into a "file for each sentence or paragraph"), claim 22; EX-1083 ¶¶[0043] (segmenting

audio presentation), [0056]-[0057]; EX-1084 ¶[0002]; EX-1085, claim 1; EX-1086, Abstract; EX-1002 ¶35.)

For example, Yoshimura disclosed dividing original media content into segments stored as separate files on content servers:

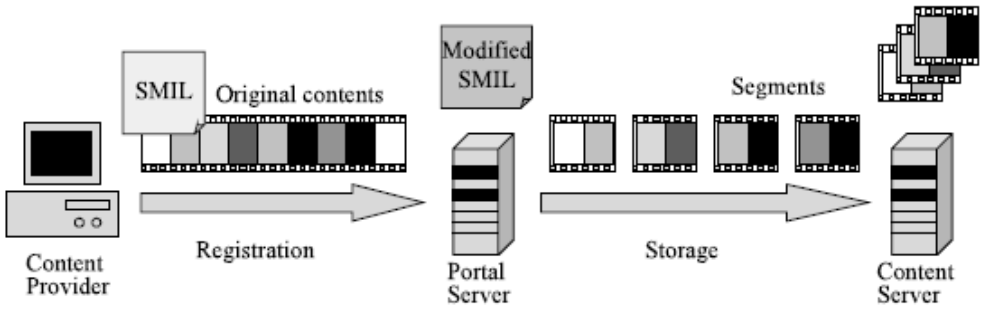


Fig. 3 Content segmentation and SMIL modification at portal server.

(EX-1006, Fig. 3; *id.*, 1781.)

III. THE '740 PATENT

A. Overview

The '740 patent discloses a system for delivering digital audio data. (EX-1001, 1:18-19.) Its purported advance is "segmenting an audio stream into a plurality of small digital audio files" that can be "transmitted, loaded, and played, in a specific order[.]" (*Id.*, 2:33-41.) The files are stored on multiple servers. (*Id.*, 16:52-62.) A client can download a server list and select a "primary server." (*Id.*, 10:35-36.) If that server encounters performance issues or fails, the client selects another server. (*Id.*, 10:4-39, 10:58-67.) The patent admits that (i) segmenting audio

content into smaller files was known (*id.*, 2:16-19), and (ii) "server replacement" was known (*id.*, 10:60-61). (EX-1002 ¶37.)

B. Prosecution

During prosecution, the applicant distinguished the prior art on limitations requiring selecting a second library server from the list of servers based on server statistics, and downloading a media segment from the second library for playback. (EX-1095, 31-37.) Although these limitations were well known, the Examiner allowed the claims. (*Id.*, 8-12.)

C. Priority

The '740 patent's earliest possible priority date is December 13, 2005. (EX-1001, 1-2.) Petitioners do not concede that the claims are entitled to that priority date.

IV. LEVEL OF ORDINARY SKILL IN THE ART

A POSITA is "a person of ordinary creativity, not an automaton." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). Here, a POSITA would have had at least a bachelor's degree in electrical engineering, computer engineering, or computer science, and at least three years of industry or academic experience in the design, development, and/or implementation of content rendering and/or distribution systems. (EX-1002 ¶¶27-31.) Work experience could substitute for formal education and additional formal education could substitute for work experience. (*Id.* ¶29.)

V. CLAIM CONSTRUCTION

No claim terms require construction to resolve the obviousness challenges here. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Ltd.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017); *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). For purposes of this proceeding only, Petitioners assume the claims are not invalid under §112.

VI. STATEMENT OF PRECISE RELIEF REQUESTED

A. Grounds

The Board should cancel the claims as obvious under §103 on the following Grounds:

Ground	Challenged Claims	References
1A	1, 6	Young
1B	1, 6, 11	Young, Yoshimura, and Copley
1C	2	Ground 1A or 1B and Kate
1D	5	Ground 1A or 1B and Sull
1E	18	Ground 1A or 1B and Ganesan
1F	3	Ground 1A or 1B, Kate, and Ganesan
1G	4	Ground 1A or 1B, Kate, Ganesan, and Sull
1H	10	Ground 1A or 1B and Shapiro
1I	11	Ground 1B and Lindahl or Sull

2A	1, 6	Leighton and Seed
2B	1, 2, 6, 10	Leighton, Seed, and Lindahl
2C	2	Leighton, Seed, and Kate
2D	5	Ground 2A or 2B and Sull
2E	18	Ground 2A or 2B and Ganesan
2F	3	Ground 2B or 2C and Ganesan
2G	4	Ground 2B or 2C, Ganesan, and Sull
2H	10	Ground 2A or 2B and Shapiro
2I	11	Ground 2B and Yoshimura

Additional support is included in the Declaration of Professor Ketan Mayer-Patel, Ph.D. (EX-1002.)

B. Status of References as Prior Art

Each following reference is prior art under pre-AIA §102(b) because it published more than one year before the '740 patent's earliest possible priority date of December 13, 2005:

Reference	Publication Date	Exhibit
Young	November 5, 2002	EX-1008
Leighton	August 22, 2000	EX-1032
Copley	March 27, 2003	EX-1009
Sull	June 6, 2002	EX-1005
Yoshimura	September, 2003	EX-1006; *see* EX-1097

Lindahl	September 29, 2004	EX-1004
Seed	August 21, 2003	EX-1011
Shapiro	November 28, 1999	EX-1042

Kate is prior art under pre-AIA §§102(a) and 102(e) because the PCT application published on February 3, 2005, from an application filed on July 20, 2004, and designated the U.S. (EX-1041.) Ganesan is prior art under pre-AIA §102(a) and (e) because it was filed on March 9, 2005. (EX-1010.)

The references are analogous art because each is from the same field of endeavor as the '740 patent, e.g., content distribution and/or rendering. (EX-1002 ¶22.) They are also pertinent to a particular problem the inventor was focused on, e.g., efficient and effective distribution and/or rendering of content. (*Id.*)

VII. GROUND 1A: CLAIMS 1 AND 6 WOULD HAVE BEEN OBVIOUS IN VIEW OF YOUNG.

Young discloses a CDN that tracks server performance and routes media content requests to an optimal server. (EX-1002 ¶40.) In response to a client request for a media file, Young's client obtains a list of servers that host the requested content. (EX-1008, Abstract.) The client performs a series of steps relating to server selection and downloads. First, the client pings each server on the list and prioritizes them based on performance (e.g., latency). (*Id.*) The client then downloads a first portion of the file from the highest priority server, a second portion from the second

highest priority server, and so on until it has received a portion from every server in the list. Those steps alone, referred to as the "First Stage" for ease of reference, disclose or render obvious claims 1 and 6. (EX-1002 ¶40.)

Having monitored each server's throughput during the First Stage, the client selects the best server to complete the download. (EX-1008, Abstract.) If that server's performance drops below a threshold, the client selects the next best server based on the previously obtained statistics. (*Id.*) This "Second Stage" also discloses or renders obvious claims 1 and 6. (EX-1002 ¶41.)

An overview of Young's process is shown in Figure 2:

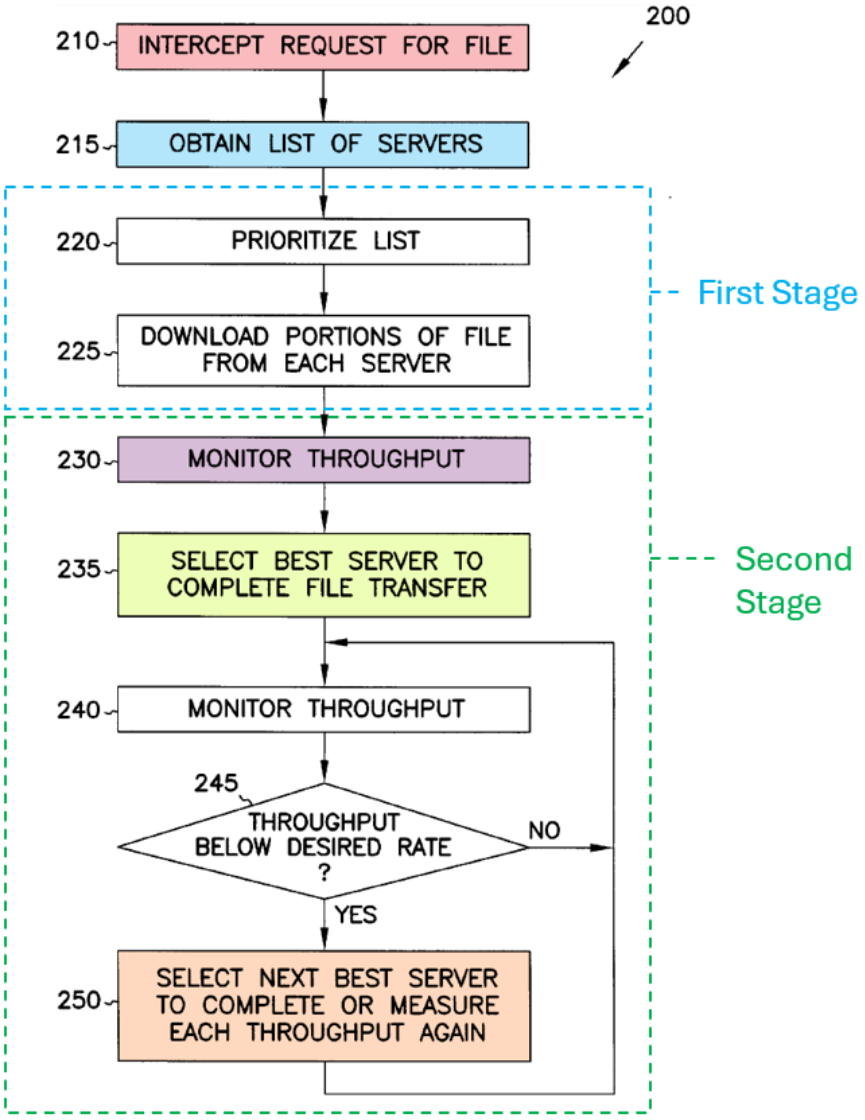


FIG. 2

(EX-1008, Fig. 2[1]; EX-1002 ¶42.)

[1] Figures herein may be colored and/or annotated for clarity.

A. Claim 1

1. Preamble

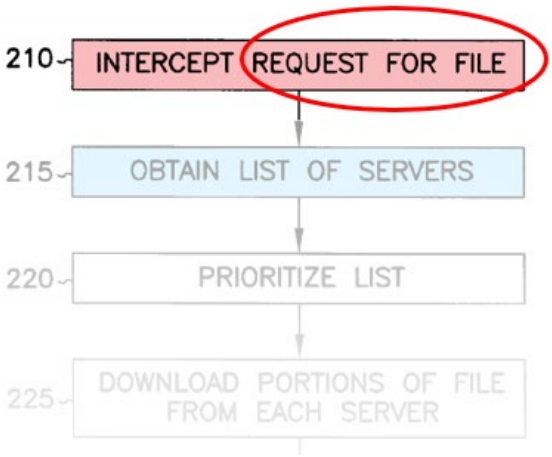
The preamble recites "[a] non-transitory computer readable storage medium including computer readable code" that can be executed by a computer.

Young discloses a conventional computer (e.g., PC) that contains storage and executes code ("applet"). (EX-1008, 2:54-55, 5:29-36 ("software stored on computer readable media"), 2:54-3:17, 3:66-4:15, Fig. 1; EX-1002 ¶44.) Accordingly, Young discloses the preamble. (EX-1002 ¶¶43-44.)

2. Element 1[a]

Element 1[a] recites "send[ing] a request to a network-based server, the request including a unique identifier for identifying an audio stream."

Young discloses that a user can request a file stored on an internet-accessible server. (EX-1008, 1:64-66 ("request"), 4:9, Abstract; EX-1002 ¶46.) Young's Figure 2 shows the user's "request," which the applet intercepts at step 210:



(EX-1008, Fig. 2 (excerpt).)

The request includes a uniform resource locator (URL) for the file, and each file has a different URL. (*Id.*, 1:12-19, 3:66-4:7; EX-1002 ¶47.) Thus, the request includes a unique identifier for the requested file. (EX-1002 ¶47.)

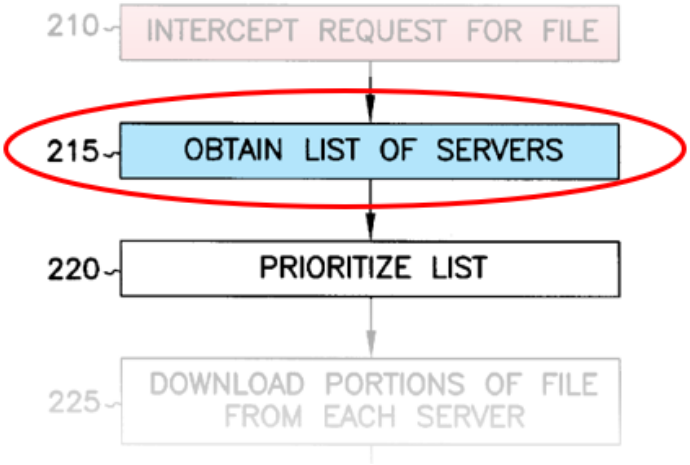
Young discloses that the requested file (information) can be "multimedia data." (EX-1008, 3:66-4:5; EX-1002 ¶48.) A POSITA would have understood that an audio stream is one type of "multimedia data." (EX-1002 ¶48.)

Young therefore discloses or renders obvious sending a request to a network-based server (e.g., internet servers), the request including a unique identifier (e.g., URL) for identifying an audio stream (e.g., multimedia audio file). (EX-1002 ¶49.)

3. Element 1[b]

Element 1[b] recites "load[ing] a list of library servers received from the network-based server, the list of library servers determined in dependence upon the unique identifier."

Young's applet obtains a list of library servers based on the user's request, as shown at step 215:



(EX-1008, Fig. 2 (excerpt); *id.*, 4:28-30 (applet "obtains the list of possible servers), 1:66-2:1, claim 7 ("obtains a list of servers having a copy of [the] desired file"); EX-1002 ¶51.) The list is received from the network-based server. (EX-1008, 4:28-30 (list obtained "from the server identified by the initial link").)

Young further discloses the list is determined in dependence upon the unique identifier (URL) because the list includes only servers containing the file identified by the URL. (*Id.*, 4:16-21, 1:66-2:1, claim 7; EX-1002 ¶52.)

Accordingly, Young discloses or renders obvious loading a list of library servers (e.g., those having a copy of requested file) received from the network-based server (e.g., server identified by initial link), the list of library servers determined in dependence upon the unique identifier (URL). (EX-1002 ¶¶45-53.)

4. Element 1[c]

Element 1[c] recites "maintain[ing] service level statistics for each library server in the list of library servers."

Young discloses maintaining such statistics. (EX-1002 ¶55.) Young prioritizes the list of servers (step 220) by measuring the latency (response time) of each server. (EX-1008, 4:31-38, Fig. 2.) Latency is measured by sending a "ping" to each server on the list and "keeping track of the amount of time for each server to respond." (*Id.*) Young then downloads a portion of the requested file from each server in the list (step 225) and measures the throughput of each server during the download (step 230). (*Id.*, 4:39-57, 2:5-13, Fig. 2.) Each server's ping is used to improve the measured throughput's accuracy and "obtain a better indication of true bit rate." (*Id.*, 4:41-45.) Young then selects the best server to download the rest of the requested file (step 235). (*Id.*, 4:54-57, 2:5-13, Fig. 2; EX-1002 ¶55.)

Young continues to monitor the selected server's throughput (step 240) and determines a "desired [throughput] rate" for it. (EX-1008, 4:58-5:3; EX-1002 ¶56.) The desired rate is a minimum threshold for server performance and is a percentage of the server's throughput (determined at step 230). (EX-1008, 5:1-6.) If the throughput of the selected server falls below the desired rate (step 245), a second server (as determined from steps 225-235) is selected (step 250). (*Id.*, 4:60-62, 2:16-

22.) The download continues using the second server as its throughput is monitored. (*Id.*, 4:60-65.)

The service level statistics (e.g., ping, throughput, and bit rate) of each server are maintained by the applet. Ping is maintained to provide the preliminary ranking and further to obtain a "better indication of true bit rate." (EX-1008, 4:41-45; EX-1002 ¶57.) Throughput and bit rate are maintained to rank servers, calculate the "desired rate" for selected servers, and select the next best server if necessary. (EX-1008, 4:40-57, 5:1-9.) Thus, service level statistics for each server are maintained. (EX-1002 ¶57.)

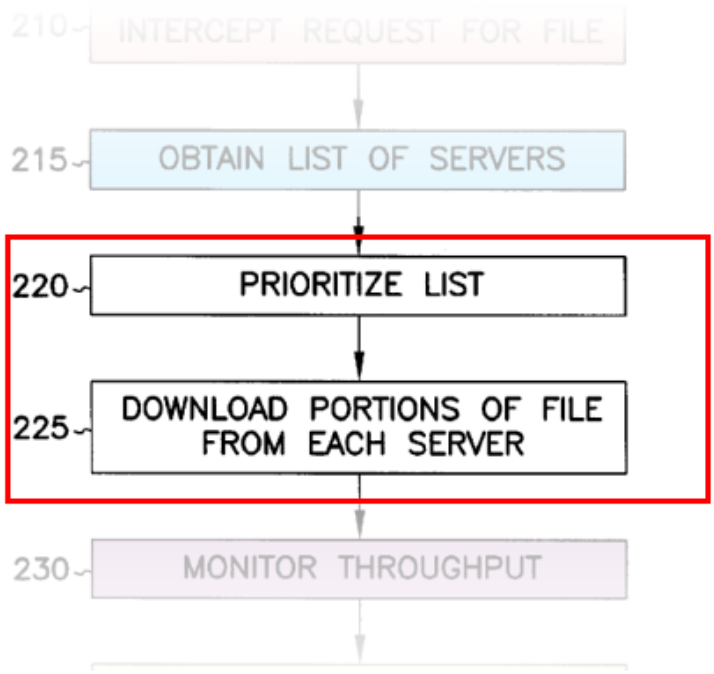
Young therefore discloses or renders obvious maintaining service level statistics (e.g., ping, throughput, and/or bit rate) for each library server in the list of library servers. (*Id.* ¶¶54-58.)

5. Element 1[d][i]

Element 1[d][i] recites "select[ing] a first library server from the list of library servers in dependence upon the service level statistics." Young discloses this limitation in two ways.

a. First Stage Server Selection

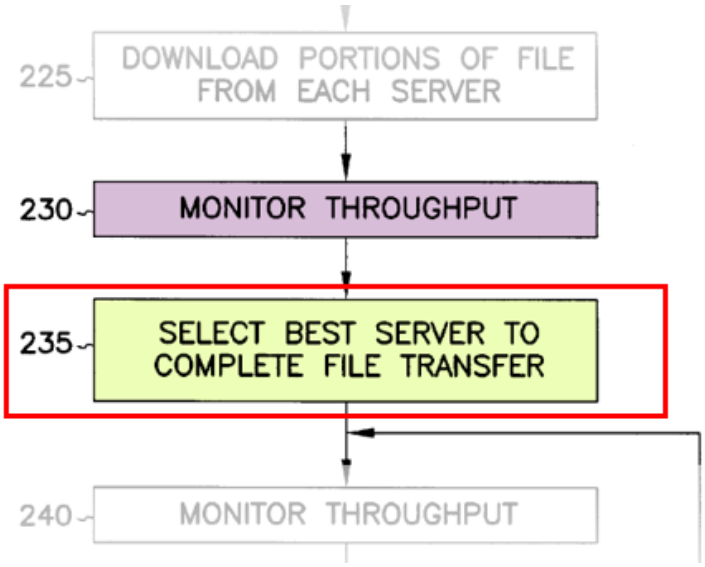
First, Young discloses selecting a first library server when it selects the "highest priority server" and downloads a portion of the file from that server (step 225):



(EX-1008, Fig. 2 (excerpt), 4:39-40, 2:10-13, 5:10-19, claim 11; EX-1002 ¶60.) That server is selected based on the service level statistics, e.g., ping. (EX-1008, 4:31-38; EX-1002 ¶60.)

b. Second Stage Server Selection

Second, Young discloses selecting a first library server when it selects the "best server" for downloading the rest of the requested file (step 235):



(EX-1008, Fig. 2 (excerpt), 4:54-57 (the "highest throughput server which is selected as the optimal server"), 5:10-19, claim 11 ("selecting an optimal server"); EX-1002 ¶61.) This server is selected based on the service level statistics, e.g., throughput, ping, and bit rate. (*Supra* §VII.A.4; EX-1002 ¶61.)

Thus, Young discloses or renders obvious selecting a first library server (first server at step 225 or "best server" at step 235) from the list of library servers in dependence upon the service level statistics (e.g., ping, throughput, bit rate). (EX-1002 ¶¶59-62.)

6. Element 1[d][ii]

Element 1[d][ii] recites "the first library server having a plurality of digital audio files, each digital audio file in the plurality of digital audio files including a different segment of the audio stream."

Young discloses downloading "information" via a network (e.g., the Internet). (EX-1008, 3:66-4:5.) The information "may be referred to as a file," and the file may contain "multimedia data." (*Id.*; EX-1002 ¶64.) Young further discloses downloading different segments of the file/information from different servers. (EX-1008, Abstract, 1:59-63, 4:58-5:9, 5:19-21, Fig. 2 (step 225 ("download portions of file from each server")); EX-1002 ¶64.)

A POSITA would have understood Young's "multimedia data" to include an audio stream. (*Supra* §VII.A.2; EX-1002 ¶65.) A POSITA also would have understood that the different segments or portions of the audio stream would be stored as individual files. (EX-1002 ¶65.) A POSITA would have had so understood because storing multimedia (e.g., audio) file segments as individual media files was conventional, as the '740 patent admits and many references demonstrate. (EX-1001, 2:16-18 (audiobook segmented into 24 audio files); *supra* §II.B; EX-1002 ¶65.)

Even if Young did not disclose storing the separately downloadable segments of the multimedia data (audio) as individual files, doing so would have been obvious. A POSITA would have been motivated to store the individually downloadable portions of the multimedia files as smaller files because such segmentation was conventional and a POSITA understood the benefits of smaller files, including faster download speeds and allowing content to be provided to devices with less storage.

(EX-1004 ¶¶[0006]-[0007]; EX-1011 ¶[0057] (segmentation enhances network performance because many users do not need the complete large audio file); EX-1006, 1780 (segmenting larger files "leads to efficient cache memory and network resource utilization"), 1778-81; s*upra* §II.B; EX-1002 ¶66.) And, because this was well known, a POSITA would have reasonably expected success in providing a multi-file audio stream using Young's system. (EX-1002 ¶66.)

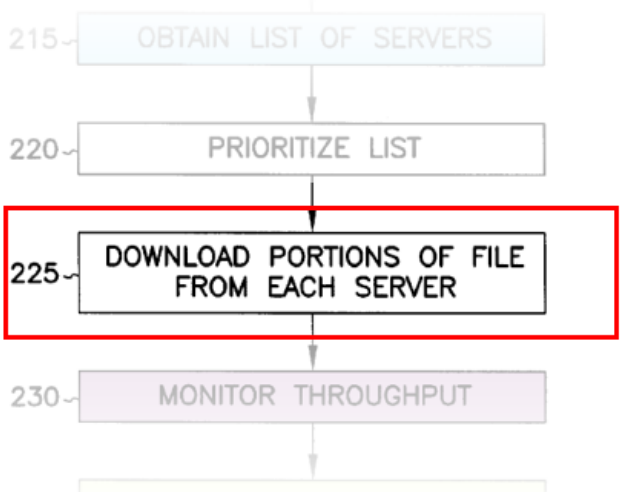
Thus, Young discloses or renders obvious this limitation. (EX-1002 ¶¶63-67.)

7. Element 1[e]

Element 1[e] recites "download[ing] a first digital audio file from the plurality of digital audio files for playback with a media player."

a. First Stage Server

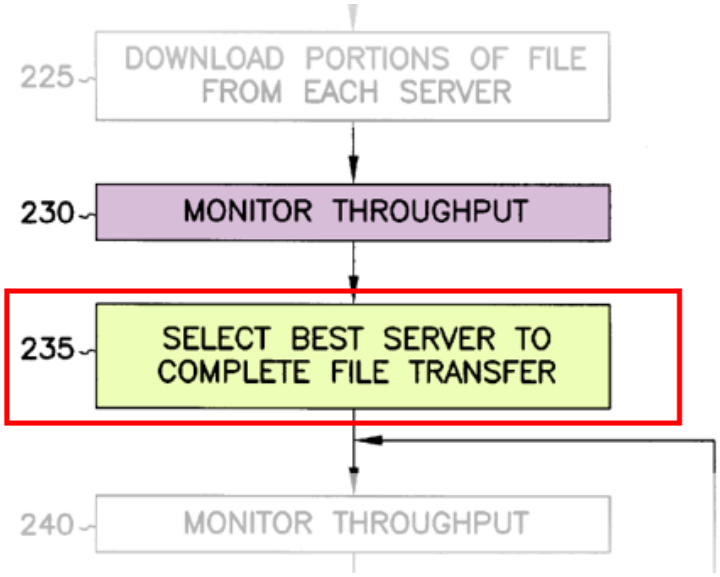
Young discloses downloading a first portion of the file from the highest priority server (step 225):



(EX-1008, Fig. 2 (excerpt), 4:39-46; EX-1002 ¶69.)

b. Second Stage Server

Young discloses downloading a portion of the multimedia file from the first server, i.e., the "server which is selected as the optimal server." (EX-1008, 4:54-57, 5:10-28, claim 11 (download desired file); EX-1002 ¶70.)



(EX-1008, Fig. 2 (excerpt).)

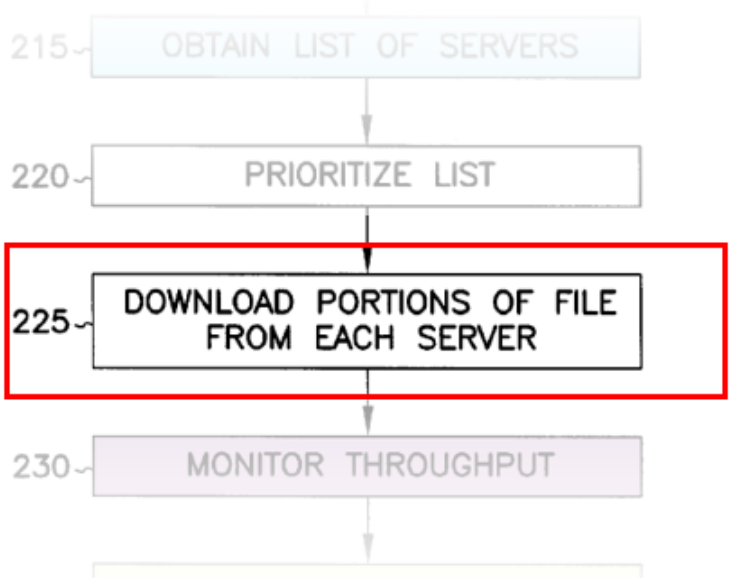
As discussed above, a POSITA would have understood each segment to be stored as a digital multimedia (e.g., audio) file, or this would have been obvious. (*Supra* §VII.A.6; EX-1002 ¶71.) Accordingly, Young discloses or renders obvious downloading a first digital audio file ("first portion" at step 225 or rest of the file at step 235) from the plurality of digital audio files (all files in audio stream) for playback with a media player (on Young's PC). (EX-1002 ¶¶68-72.)

8. Element 1[f][i]

Element 1[f][i] recites "select[ing] a second library server from the list of library servers in dependence upon the service level statistics."

a. First Stage Server Selection

Young discloses selecting a "second server" from the list. (EX-1008, 4:48-54; EX-1002 ¶74.) That selection is based on the service level statistics, e.g., ping. (EX-1008, 4:31-38, 2:7-10; EX-1002 ¶74.) This is shown in Step 225:

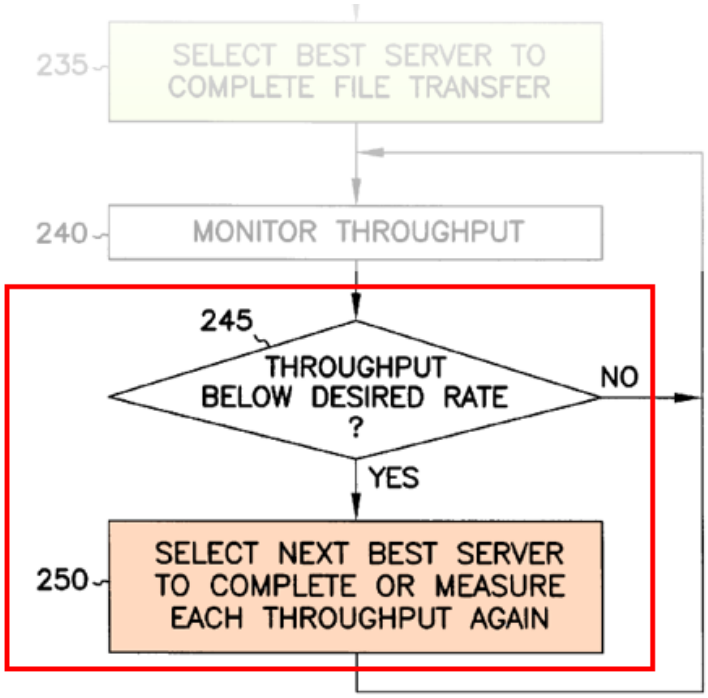


(EX-1008, Fig. 2 (excerpt), 4:45-51; EX-1002 ¶74.)

b. Second Stage Server Selection

Young discloses that, "[i]f the performance [of the optimal server] falls below a desired rate …, a different server may be selected." (EX-1008, 4:60-65.) The second server may be the "next server on the previously generated performance ranked list[.]" (*Id.*) Thus, this server is selected based on the maintained service

level statistics (e.g., ping, throughput, bit rate, and/or a percentage of the throughput). (*Id.*, 4:58-62, 5:1-6; EX-1002 ¶75.)



(EX-1008, Fig. 2 (excerpt).)

Thus, Young discloses or renders obvious this limitation. (EX-1002 ¶¶73-76.)

9. Element 1[f][ii]

Element 1[f][ii] recites "the second library server having a copy of the plurality of digital audio files."

Young discloses that each library server in the list, and therefore the second library server in each mapping, contains copies of the requested multimedia content.

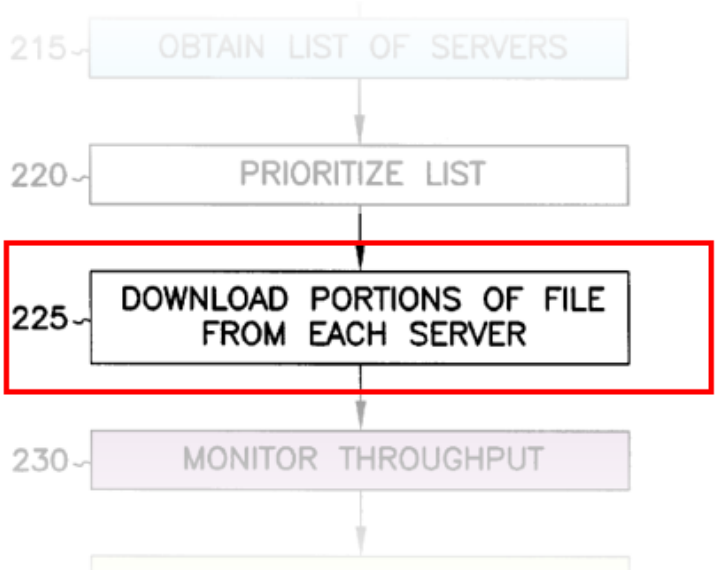
(*Supra* §VII.A.6; EX-1008, 4:58-5:9, claim 7; EX-1002 ¶78.) Thus, Young discloses or renders obvious this limitation. (EX-1002 ¶¶77-79.)

10. Element 1[g]

Element 1[g] recites "download[ing] a second other digital audio file from the second library server for playback with the media player."

a. First Stage Server

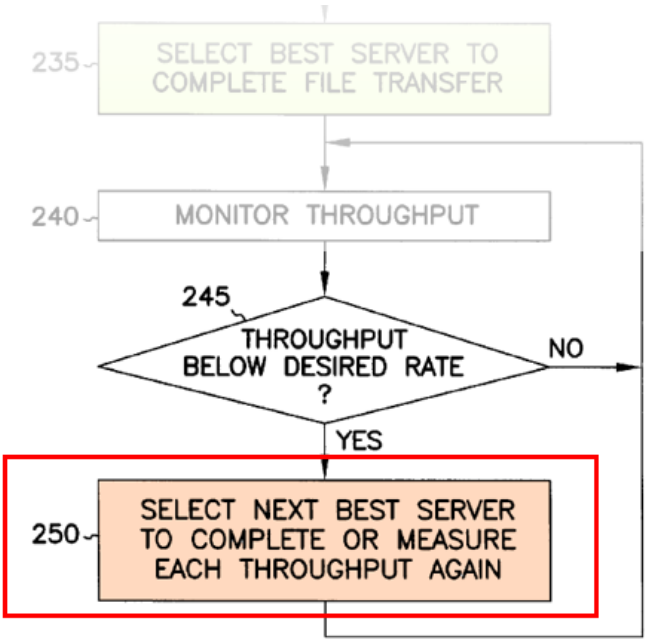
Young discloses downloading a second portion (e.g., file) from the second-highest priority server. (EX-1008, 4:48-54, 2:7-10, Fig. 2 (step 225; EX-1002 ¶81.)



(EX-1008, Fig. 2 (excerpt).)

b. Second Stage Server

Young discloses that, after selecting a second server ("next best server" in Figure 2), the client downloads subsequent portions of the multimedia content from that server. (*Id.*, 4:60-5:6, 5:10-28, Fig. 2 (step 250); EX-1002 ¶82.)



(EX-1008, Fig. 2 (excerpt).)

A POSITA would have understood the portions to be audio files (*supra* §VII.A.6) for playback with the media player (e.g., on Young's client) (*supra* §VII.A.7). (EX-1002 ¶83.) Young therefore discloses or renders obvious this limitation. (*Id.* ¶¶80-84.)

Young therefore discloses or renders obvious every limitation of claim 1. (*Id.* ¶¶43-85.)

B. Claim 6

Claim 6 further recites "wherein the service level statistics include historical transfer rates for each library server in the list of library servers."

Young's service level statistics include "transfer rates" for each server in the list because Young's statistics include "throughput" measured in "bits per second."

(EX-1008, 4:40-41, 4:54-57; EX-1002 ¶87.) Young's service level statistics are historical because they are obtained, stored, and later used to rank and select servers, and to determine performance thresholds. (*Supra* §§VII.A.4-VII.A.5, VII.A.10; EX-1002 ¶87.)

Even if Young did not disclose or render obvious this additional limitation, it would have been obvious. Young teaches using server statistics for server selection and using historical transfer rates to do so was widely known by 2005. (EX-1002 ¶88.) Moreover, a POSITA would have been motivated to use historical transfer rates (in addition to or instead of Young's performance statistics) because it would help improve system performance. (*Id.*) Using historical transfer rates to select the servers in Young represents the simple substitution of one known element (historical transfer rates) for another (Young's statistics) to obtain predictable results (selecting the historically fastest server). (*Id.*); *KSR*, 550 U.S. at 417. It also represents using a known technique (server selection using historical transfer rates) to improve a similar device and method (Young's CDN) in the same way. (*Id.*) It also applies a known technique to a known device and method that is ready for improvements and yields predictable results (server selected in part based on historical transfer rates). (*Id.*)

Young therefore discloses or renders obvious claim 6. (EX-1002 ¶¶86-90.)

VIII. GROUND 1B: CLAIMS 1, 6, AND 11 WOULD HAVE BEEN OBVIOUS IN VIEW OF YOUNG, YOSHIMURA, AND COPLEY.

Claims 1, 6, and 11 also would have been obvious over Young (as discussed above) in further view of Yoshimura and Copley. (EX-1002 ¶91.) Yoshimura discloses segmenting audio files into a plurality of smaller files. Copley discloses maintaining server performance statistics and selecting a content server based thereon. (*Id.*)

Petitioners incorporate the discussion of Young from Ground 1A here, and discuss below the limitations for which Yoshimura and/or Copley are relevant.

A. Claim 1

1. Elements 1[c], 1[d][i], and 1[e]

These elements recite maintaining service level statistics for each server and selecting the first and second servers in dependence upon those statistics.

These claim elements would have been obvious in view of Copley. Copley discloses a CDN. (EX-1009, Abstract, ¶¶[0006], [0014]; EX-1002 ¶93.) The client includes a media player. (EX-1009 ¶[0006].) The client "collect[s] usage and performance data," and "information about failures, latency, and other information" for each server. (*Id.* ¶¶[0015], [0074].) Copley stores these statistics to rank and reprioritize servers. (*Id.* ¶¶[0015]-[0016], [0051], [0073]-[0074]; EX-1002 ¶93.) Ac-

cordingly, Copley discloses maintaining service level statistics (e.g., usage and performance data) for each library server in the list of library servers and selecting a server based on those statistics. (EX-1002 ¶93.)

A POSITA would have been motivated to maintain service level statistics, and select the appropriate server based on those statistics, as disclosed in Copley, in Young's system. (*Id.* ¶¶94-97.)

First, Young suggests the combination because it seeks to optimize the download of media content by selecting an optimal server. (EX-1008, Abstract, 1:58-2:25, 2:48-53, 5:11-15; EX-1002 ¶95.) Copley discloses maintaining performance data to determine an optimal server while achieving improved performance and reduced costs. (EX-1009 ¶¶[0013]-[0019], [0051], [0073]-[0074]; EX-1002 ¶95.)

Second, because using service level statistics was well known (*supra* §II.A), maintaining those statistics (as taught by Copley) represents the simple substitution of one known element (Copley's performance data) for another (Young's server statistics) to obtain predictable results (maintaining server performance data used to select servers). (EX-1002 ¶96.) The combination represents using a known technique (maintaining performance data) to improve a similar device and method (Young's CDN) in the same way. (*Id.*) The combination further applies a known technique (Copley's maintenance of performance data) to a known device and

method (Young's CDN and server selection) that is ready for improvement and yields predictable results. (*Id.*)

A POSITA would have reasonably expected success in maintaining the service level statistics as in Copley because it was widely known and routine to do so. (EX-1009 ¶¶[0015]-[0016], [0051], [0073]-[0074]; EX-1087, Abstract; EX-1089, 1, 3-5; EX-1002 ¶97.) Further, Young uses server performance to rank servers and determine an optimal server, which would have given a POSITA a reasonable expectation of success in doing so using the conventional performance data Copley discloses. (EX-1008, 4:31-5:9; EX-1002 ¶97.)

2. Elements 1[d][ii]-1[g]

Even if Young did not disclose or render obvious that the requested multimedia content is an audio stream stored as a plurality of audio files, these limitations are disclosed and rendered obvious by Yoshimura. (EX-1002 ¶100.)

Yoshimura's CDN divides content including audio streams into multiple digital files, each file containing a segment of the content:

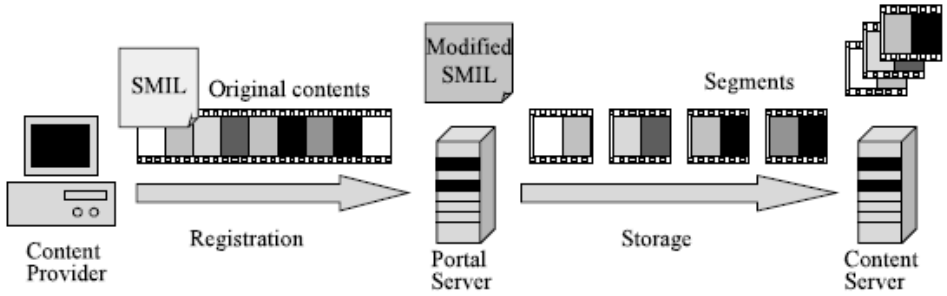


Fig. 3 Content segmentation and SMIL modification at portal server.

(EX-1006, Fig. 3; *id.*, 1780 (segmentation "increases the number of [] files").) Yoshimura provides an example in which an audio file "content-A.mp4" is segmented and stored in three audio files ("content-A-{1,2,3}.mp4"). (*Id.*, 1780-81; EX-1002 ¶101.) The segmented audio files are provided to the content servers. (EX-1006, 1780, Fig. 3; EX-1002 ¶101.)

It would have been obvious to a POSITA, in view of Yoshimura, that the requested multimedia "information" described in Young would be an audio stream and that the "file" described in Young would be a segmented audio stream stored as a plurality of audio files. (EX-1002 ¶102.) Such a modification of Young would render obvious the limitations in claim 1 that recite an "audio stream" and "a plurality of digital audio files." (*Id.*)

A POSITA would have been motivated to segment the media content in Young's system, and therefore store on the servers a plurality of digital audio files as taught by Yoshimura, for many reasons. (*Id.* ¶¶103-07.)

First, Yoshimura teaches that by "dividing content into several segments … leads to efficient cache memory and network resource utilization." (EX-1006, 1780.) A POSITA would have been motivated to segment the multimedia content described in Young into smaller files to achieve these benefits. (EX-1002 ¶104.)

Second, Young recognizes that download "performance may change over time for very large files." (EX-1008, 4:59-60.) Yoshimura explains that content

segmentation is "effective especially for large [files]." (EX-1006, 1780.) Thus, a POSITA would have been motivated to segment Young's media files, especially larger ones, to reduce download times and reduce the likelihood that the selected server's performance decreases during such downloads. (EX-1002 ¶105.)

Third, segmenting media content into smaller files was widely known and supported, as the '740 patent admits. (*Supra* §II.B; EX-1002 ¶106.) Accordingly, modifying Young's system to store an audio stream as multiple digital audio files represents the simple substitution of one known element (audio content stored in multiple smaller files) for another (one larger file) to obtain predictable results (more efficient storage and faster content delivery). (EX-1002 ¶106.) This combination represents using a known technique (storing audio as multiple files) to improve a similar device and method (Young's multimedia CDN) in the same way. (*Id.*) Similarly, this combination applies a known technique (storing segmented media content in multiple files) to a known device and method (Young's CDN) that is ready for improvements and yields predictable results. (*Id.*)

Because content segmentation was well known and widely used, a POSITA would have reasonably expected success in segmenting Young's audio file into a plurality of audio files (as taught by Yoshimura). (EX-1002 ¶107.)

B. Claim 6

Copley discloses maintaining "historical" server statistics. (EX-1009 ¶¶[0013]-[0017], [0047]-[0050]; EX-1002 ¶110.) Thus, Young, Yoshimura, and Copley render claim 6 obvious for the reasons discussed above. (*Supra* §§VII.B, VIII.A.1; EX-1002 ¶¶110-11.)

C. Claim 11

1. Element 11[a]

Claim 11 depends from claim 1. Element 11[a] recites "download[ing] a descriptor file from the first library server, the descriptor file for ordering the plurality of digital audio files, the descriptor file including at least one of a start time, an end time, and a play time of each digital audio file in the plurality of digital audio files within the audio stream." A descriptor file contains information about media content, such as relative positioning and timing of content segments. (EX-1001, 2:48-57.)

Using such descriptor files was well known by 2005. (EX-1002 ¶113.) One well-known descriptor file was called a "Synchronized Multimedia Integration Language" ("SMIL") file. (EX-1006, 1778-79; EX-1003, 6-7; EX-1052 ¶[0041]; EX-1002 ¶113.) SMIL is "a standard for definition and playback of multimedia presentations over the Internet" that "defines the sequence of playback" of media. (EX-1003, 21; EX-1090, 85-114; EX-1007, 125-55; EX-1002 ¶113.) A SMIL file

represents media content as a sequence of segments that play out sequentially and allows each segment to include different types of media (e.g., video, audio, and text) rendered simultaneously. (EX-1003, 21, 26; EX-1090, 21, 40, 85-114, 115-31; EX-1007, 88, 92, 125-55; EX-1002 ¶113.)

Yoshimura discloses downloading a SMIL file from the content server. (EX-1006, 1779, Fig. 1; EX-1002 ¶114.) Yoshimura's SMIL file orders a plurality of digital audio files ("content-A-1.mp4," "content-A-2.mp4," and "content-A-3.mp4") by placing them in a defined sequence, as shown in Figure 5:

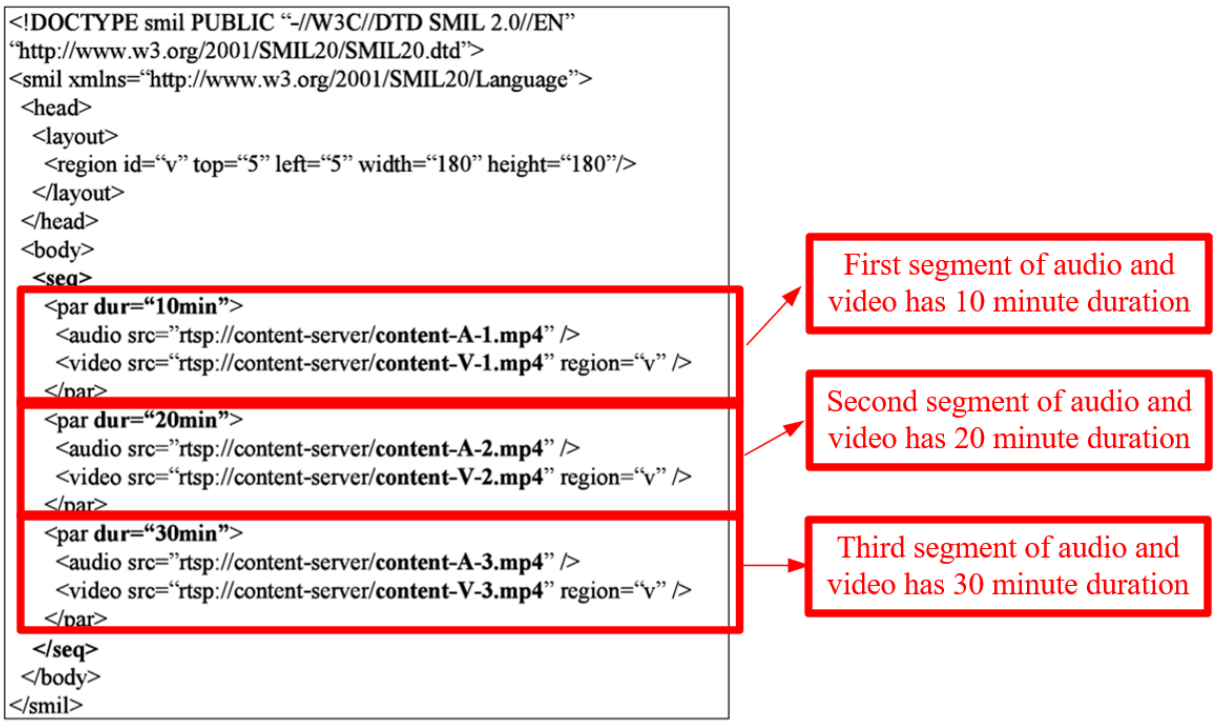


Fig. 5 Modified SMIL file after content segmentation.

(EX-1006, Fig. 5, 1780-81; EX-1002 ¶114.) In this example, the audio files are "sequentially played." (EX-1006, 1781; *id.* ("the part located between <seq> and </seq> indicates that these segments are sequentially played").)

As shown in Figure 5, the SMIL file provides a duration ("dur" attribute) for each media content segment (<par> element). (*Id.*, Fig. 5, 1781 ("the durations of the segments are ten, twenty, and thirty minutes long").) Because segment duration is provided and they play sequentially, "the timing relation among them is evident." (*Id.*; EX-1090, 88-90, 98-99; EX-1007, 125, 127, 141 ("In general, begin+dur=end"), 142-47.) Thus, the SMIL structure and duration of each segment also provides a start and end time for each segment. (*Id.*; EX-1002 ¶115.) For example, the first segment with a start time of 0 minutes has a duration of 10 minutes and therefore an end time of 10 minutes. (EX-1002 ¶115.) The second segment's start time is therefore 10 minutes and, because its duration is 20 minutes, its end time is 30 minutes. (*Id.*) Thus, each segment's start and end time is either expressly disclosed by, or least inherent in, Yoshimura's SMIL file. (*Id.*) Alternatively, it would have been obvious to a POSITA to add the start and end times to Yoshimura's SMIL file, as was widely known. (EX-1007, 141-42 (<par> elements can have begin/end attributes).)

Together, Yoshimura and Young render obvious downloading a descriptor (SMIL) file from the first library server (e.g., Young's optimal server) for ordering

the plurality of digital audio files (e.g., audio segments) that includes at least one of a start time, an end time, and a play time (e.g., duration) of each digital audio file in the plurality of digital audio files within the audio stream. (EX-1002 ¶¶112-16.)

2. Element 11[b]

Element 11[b] recites "wherein the computer determines the first digital audio file for playback using a time offset external to the descriptor file and the at least one of the start time, end time, and play time of each digital audio file in the plurality of digital audio files."

Yoshimura discloses that the user may invoke conventional media controls—pause, resume, skip forward, and skip backwards. (EX-1006, 1783 (client may pause, skip, or "go[] back"); EX-1002 ¶118.) A POSITA would have understood that these controls, which are external to the SMIL file, provide a time offset, as the '740 patent confirms. (EX-1001, 2:55-57 (explaining that "time offsets" are "typically provided via … rewind/fast-forward functions"); EX-1002 ¶118.)

Additionally, because "SMIL provides the timing information for playing or displaying," a client can "determine which segments are the next to the segments currently served and how long the segments will last." (EX-1006, 1780; EX-1002 ¶119.) Accordingly, a POSITA would have understood Yoshimura to disclose that a client determines a first segment (the next or previous segment) using a time offset

provided by a user (e.g., skipping forward/backward) and timing information in a SMIL file (e.g., segment start time, end time, and duration). (EX-1002 ¶119.)

Yoshimura therefore discloses or renders obvious determining the first digital audio file for playback using a time offset external to the descriptor file (e.g., time offset from user input) and the at least one of the start time, end time, and play time of each digital audio file. (EX-1002 ¶120.)

A POSITA would have been motivated to implement Yoshimura's SMIL-file-based controls in Young's system for several reasons. (*Id.* ¶¶121-25.)

First, a POSITA would have been motivated to provide segmented audio files as Yoshimura teaches. (*Supra* §VIII.A.2.) Consequently, a POSITA also would have been motivated to use Yoshimura's descriptor file to organize and synchronize the files, and to provide a means for navigating them. (EX-1002 ¶122.) Thus, Yoshimura's SMIL files would provide content access, synchronization, and navigation controls. (EX-1006, 1778, 1783; EX-1002 ¶122.)

Second, Young sought to optimize content delivery using the most efficient server. (EX-1008, 1:58-59, 5:10-15; EX-1002 ¶123.) This would have motivated a POSITA to look to Yoshimura, which uses SMIL files to efficiently provide segmented media content that a user can navigate through while also "enhanc[ing] streaming media quality" and improving network efficiency. (EX-1006, 1778, 1783; EX-1002 ¶123.)

Third, using CDNs and SMIL files was widely known, as were conventional navigation controls. (*Supra* §§II.A, VIII.C.1; EX-1006, 1779; EX-1007; EX-1005 ¶[0205], Fig. 9; EX-1035 ¶[0125], Fig. 3; EX-1085 ¶[0014]; EX-1083 ¶¶[0044]-[0045], [0048]; EX-1002 ¶124.) Thus, using a SMIL file to access and navigate segments of media content represents the simple addition of one known element (SMIL file) to another (segmented media content) to obtain predictable results (using a SMIL file to access and navigate media content segments). (EX-1002 ¶124.) This combination also reflects using a known technique (SMIL file) to improve a similar device and method (Young's CDN) in the same way. (*Id.*) Moreover, this combination applies a known technique (SMIL file) to a known device and method (Young's) that is ready for improvements and yields predictable results (delivery of segmented audio files). (*Id.*)

A POSITA would have reasonably expected success using a SMIL file and conventional navigation controls as taught by Yoshimura in Young's system because using such files to navigate media content were well known. (*Supra* §VIII.C.1; EX-1083 ¶¶[0044]-[0045], [0048]; EX-1002 ¶125.) Moreover, Young teaches storing content on servers, and Yoshimura teaches segmenting the content and using SMIL files to access and navigate the segmented content in a similar system. (EX-1008, Abstract, 1:59-63, 4:39-5:9, 5:19-21; EX-1006, 1778-80; EX-1002 ¶125.)

IX. GROUND 1C: CLAIM 2 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 1A OR 1B REFERENCES AND KATE.

Claim 2 depends from claim 1 and further recites "wherein the unique identifier is an ISBN number."

Young discloses using a URL as a unique identifier of media content. (*Supra* §VII.A.2.) Kate discloses accessing media content on a server using "server content locators, such as a URL." (EX-1041, Abstract, 2:21-3:16; EX-1002 ¶128.) Kate further discloses that the server content locator can be a URN with an ISBN (e.g. "urn:isbn:088663475046569"). (EX-1041, 12:30-13:2.) Kate therefore discloses requesting media content using a unique identifier that is an ISBN. (EX-1002 ¶128.) Thus, Kate discloses the additional limitation of claim 2. (*Id.*)

A POSITA would have been motivated to combine Young and Kate, and to use an ISBN as a unique identifier in Young's system. (*Id.* ¶¶130-34.)

First, Young suggests doing so because it discloses requesting content using a unique identifier. (*Supra* §VII.A.2; EX-1002 ¶131.) Kate discloses using an ISBN as a unique identifier for the same purpose, and a POSITA would have recognized using an ISBN—an established standard—would be an efficient way to accurately and consistently identify the requested content (e.g., although content's URL may change, an ISBN would still uniquely identify it). (EX-1041, 12:30-13:2; EX-1002 ¶131.)

Second, an ISBN was a well-established standard for identifying content and was therefore one of a finite number of options for the unique identifier in Young. (EX-1002 ¶132; EX-1041, 12:30-13:2 (use of URL, URN including an ISBN, or URI).)

Third, because ISBNs were a standard for identifying published media content such as audiobooks, the combination represents a simple substitution of one known element (URN with ISBN) for another (URL without an ISBN) to obtain predictable results (identifying content). (EX-1002 ¶133.)

Fourth, the combination represents using a known technique (identifying content via ISBN) to improve a similar device and method (Young's content retrieval) in the same way. (*Id.*) The combination also applies a known technique (identifying content via ISBN) to a known device and method (Young's) that is ready for improvement and yields predictable results. (*Id.*)

A POSITA would have reasonably expected success because ISBNs were well known for identifying content and because the alteration would be trivial (replacing URL with URN comprising ISBN). (EX-1041, 12:30-13:2; EX-1002 ¶134.)

X. GROUND 1D: CLAIM 5 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 1A OR 1B REFERENCES AND SULL.

Claim 5 depends from claim 1 and further recites "wherein the unique identifier is obtained from one of a bookmark structure, a card catalog structure, and an advertising structure."

Bookmarks were well known and widely used in media content. (*See* EX-1041, 11:15-17:7; EX-1005, Abstract, ¶¶[0005]-[0007], [0172]-[0175], [0188]-[0193]; EX-1004 ¶¶[0015], [0035]; EX-1035, Abstract, ¶¶[0049]-[0054], [0060], [0135]-[0138]; EX-1033, 1:6-11, 2:17-30; EX-1028 ¶¶[0027], [0040]-[0048]; EX-1002 ¶138.) Bookmarks were commonly used to save a user's location in media content, often as a time offset from the beginning of the content, so that users could resume content at their last position. (EX-1002 ¶138.) Bookmarks typically included a unique identifier that identified the content to which it applied. (*Id*.)

Sull discloses a "multimedia bookmark" that indexes a position in media content and uniquely identifies the content. (EX-1005, Abstract, ¶¶[0005]-[0007] (conventional bookmarks include identifiers such as a file name, URL, or URI), [0172]-[0175] ("The positional information 212 may be composed of a URI, a URL, or the like[.]"), [0188]-[0193] (disclosing a "metadata identification (ID)" identifier), [0252]-[0261], Fig. 2; EX-1002 ¶139.) When a bookmark is used, Sull's system obtains a unique identifier from the bookmark, sends it to the server, and then renders

content from a bookmarked position. (EX-1005 ¶¶[0211] ("When the play-bookmark control is selected …. the URI or the like, bookmarked position, and metadata ID for the multimedia content to be played back are read from persistent storage."), [0230]-[0231] (position information sent to server), Fig. 12; EX-1002 ¶139.) Accordingly, Sull discloses obtaining the requested content's unique identifier from a bookmark structure. (EX-1002 ¶140.)

A POSITA would have been motivated to use Sull's bookmarks in Young's system. (EX-1002 ¶¶141-45.) First, doing so would have been desirable to provide the benefits of a bookmark in Young's system rather than playing content from the beginning when accessing content. (*Id.*; EX-1005 ¶[0172].)

Second, Young discloses requesting content using an identifier (URL) and obtaining media content from a position at which the media content was interrupted. (EX-1008, 1:12-42, 4:60-65; EX-1002 ¶143.) Sull discloses a bookmark that can provide a unique identifier and a position in media content to efficiently identify and access media content at the appropriate position. (EX-1002 ¶143.)

Third, because bookmarks were well known, using Sull's bookmark in Young's system represents using a known technique (obtaining a unique identifier from a bookmark) to improve a similar device and method (Young's system and method of identifying content) to obtain predictable results (obtaining a unique identifier from a bookmark in Young's system). (EX-1002 ¶144); *KSR*, 550 U.S. at 417.

Similarly, this combination applies a known technique (obtaining a unique identifier from a bookmark) to a known device and method (Young's system) that is ready for improvement and yields predictable results. (*Id.*)

A POSITA would have reasonably expected success because bookmarks were well understood, and further because both Young and Sull use a URL or URI as a unique identifier of media content. (*Supra* §VII.A.2; EX-1002 ¶145.)

XI. GROUND 1E: CLAIM 18 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 1A OR 1B REFERENCES AND GANESAN.

Claim 18 depends from claim 1 and further recites "wherein a size of each digital audio file in the plurality of digital audio files is selected in dependence upon network throughput rates."

Ganesan discloses a CDN in which a "large file is fragmented intelligently" and the "number of segments are computed or determined periodically in accordance with the required transmission rate of the title, the minimum available network speeds, etc." (EX-1010, 4:35-41; *id.*, 12:31-40, 13:47-62, Fig. 2E.) This is shown in Figure 2E:

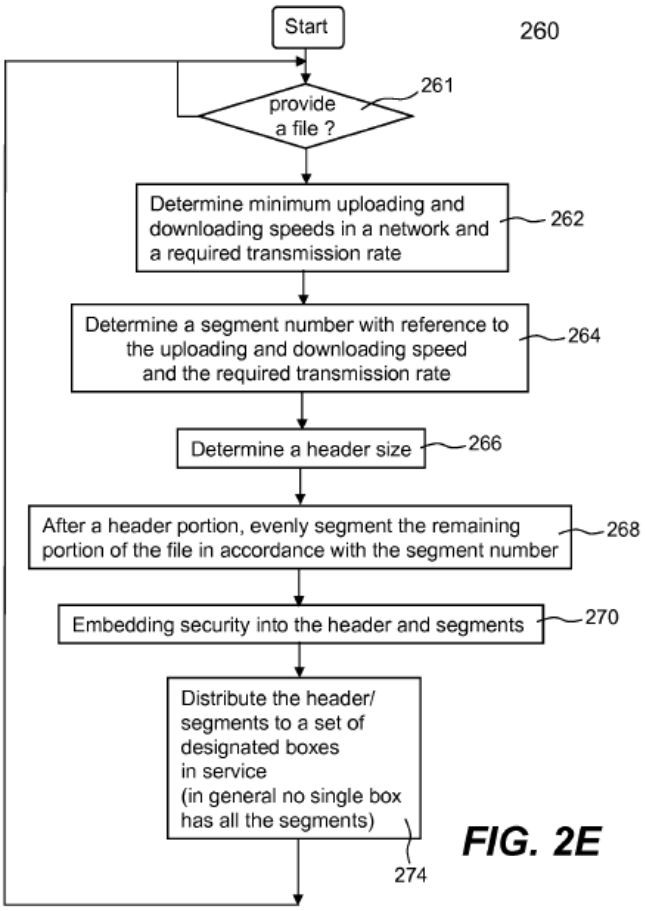


FIG. 2E

(*Id.*, Fig. 2E.)

Accordingly, Ganesan discloses the additional limitation of claim 18, and the references presented in Grounds 1A or 1B, in further view of Ganesan, render claim 18 obvious. (EX-1002 ¶¶147-49.)

A POSITA would have been motivated to select the size of audio segments in Young (Ground 1A) or the size of the segmented audio files in the Young-Yoshimura combination (Ground 1B) based on network throughput rates as taught by Ganesan. (EX-1002 ¶¶150-54.)

First, Young and Yoshimura disclose storing and downloading media content in segments, but do not disclose how each segment's size is determined. A POSITA would have been motivated to look to other references, such as Ganesan, to understand how to determine the size, and Ganesan teaches doing so based on throughput rates to improve performance. (EX-1010, 4:35-41 (such segmentation "best utilize[s] the network bandwidth and maximize[s] quality of service"), 13:56-61 (enables "efficient use of network speeds"); EX-1002 ¶151.)

Second, Young sought to optimize the download of data such as media content by tracking throughput. (EX-1008, Abstract, 1:58-59; EX-1002 ¶152.) This disclosure would have motivated a POSITA to look to Ganesan, which discloses improved efficiency transmitting content over a network by determining segment size based on the same measurement—throughput. (EX-1010, 4:35-41; EX-1002 ¶152.)

Third, because segmenting media content and measuring conventional server statistics such as throughput were well known, determining a segment size based on throughput represents nothing more than a simple substitution of one known element (determining segment size based on throughput) for another (arbitrarily determining segment size) to obtain predictable results (segments that can be efficiently transported over the network). (EX-1002 ¶153); *KSR*, 550 U.S. at 417. This combination also represents nothing more than using a known technique (determining segment size based on throughput) to improve a similar device and method (storing media

segments in Young's CDN) in the same way. (*Id.*) Indeed, other references disclosed determining the size of a segment based on communications bandwidth. (EX-1086, 2:11-16.)

A POSITA would have reasonably expected success in segmenting the audio files in Grounds 1A and 1B based on throughput (as taught by Ganesan) because such segmentation was widely known, as was choosing the size of those files based on network performance. (EX-1002 ¶154.)

XII. GROUND 1F: CLAIM 3 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 1A OR 1B REFERENCES, KATE, AND GANESAN.

Claim 3 depends from claim 2 and recites the same limitation as claim 18. The references presented in Ground 1A or 1B, in further view of Kate and Ganesan, therefore render claim 3 obvious. (*Supra* §XI; EX-1002 ¶156.)

XIII. GROUND 1G: CLAIM 4 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 1A OR 1B REFERENCES, KATE, GANESAN, AND SULL.

Claim 4 depends from claim 3 and recites the same limitation as claim 5. Accordingly, the references presented in Ground 1A or 1B, in further view of Kate, Ganesan, and Sull, render claim 4 obvious. (*Supra* §X; EX-1002 ¶157.)

XIV. GROUND 1H: CLAIM 10 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 1A OR 1B REFERENCES AND SHAPIRO.

Claim 10 depends from claim 1 and further recites that "the request includes login information."

It was well known to include login information such as a username and password in network requests before the '740 patent's earliest priority date. (EX-1002 ¶159; EX-1092, 3 (request including "username and [] password"); EX-1093, 5:34-6:51 (username and password in "cookies" attached to requests); EX-1094, 9:15-20 (automatic login using "userid and password" in a request); EX-1042, 2:1-33 ("a user name for the particular client is appended to the request's message header").) Accordingly, it would have been obvious to a POSITA, in view of the references in Grounds 1A and 1B, to include login information in the request. (EX-1002 ¶159.)

Alternatively, it would have been obvious in view of Shapiro. (*Id.* ¶160.) Shapiro discloses including login information such as a username in a request. (EX-1042, 2:11-13 ("a user name for the particular client is appended to the request's message header" to determine access), 4:38-56, 4:64-5:6 (request is denied if username is absent); EX-1002 ¶160.) Thus, Shapiro discloses the additional limitation of claim 10. (EX-1002 ¶¶158-61.)

A POSITA would have been motivated to combine the teachings of Young and Shapiro, and to include login information such as a username in Young's request. (*Id.* ¶¶162-65.) First, doing so would allow Young's system to control access to the requested content. (*Id.* ¶163.)

Second, using login information when accessing media files on servers was well known. (*Id.* ¶164.) Accordingly, this combination represents using a known technique (login information) to improve a similar device and method (content delivery) in the same way (controlling access). (*Id.*); *KSR*, 550 U.S. at 417. Moreover, this combination applies a known technique (including login information in requests) to a known device and method (Young's system) that is ready for improvement and yields predictable results (the ability to control access). (*Id.*)

A POSITA would have reasonably expected success in making the combination because including login information in a request was trivial, well-known, and explained by Shapiro. (EX-1002 ¶165.)

XV. GROUND 1I: CLAIM 11 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 1B REFERENCES AND LINDAHL OR SULL.

A. Element 11[a]

As discussed above, Yoshimura's SMIL file renders element 11[a] obvious. (*Supra* §VIII.C.1.)

B. Element 11[b]

1. Lindahl

Lindahl discloses using a bookmark with an "offset relative to the beginning" of media content to "resume playback starting from [a] stopped point as desired." (EX-1004 ¶¶[0015], [0035], [0001]; EX-1002 ¶170.) This allows the "client [to] initiate[] play … from the point as determined by the stored bookmark[.]" (EX-1004 ¶[0035]; *id.* ¶[0040].) When combined with Yoshimura's multi-file system, Lindahl discloses determining the first digital audio file for playback (e.g., the file containing the bookmarked position) using a time offset (in the bookmark) external to the descriptor file (SMIL file) and the start/end/play times of the audio files (in the SMIL file). (EX-1002 ¶170.)

It would have been obvious to a POSITA to use Yoshimura's time information as intended—to determine an audio file for download—by comparing the time offset of Lindahl's bookmark to Yoshimura's time information. (EX-1002 ¶171.) For example, it would have been obvious to use a time offset in Lindahl's bookmark (e.g., 15 minutes into the media stream), and then use Yoshimura's SMIL file, as shown in Figure 5, to determine the audio file to play (e.g., content-A-2.mp4):

```
<!DOCTYPE smil PUBLIC "-//W3C//DTD SMIL 2.0//EN"
"http://www.w3.org/2001/SMIL20/SMIL20.dtd">
<smil xmlns="http://www.w3.org/2001/SMIL20/Language">
 <head>
  <layout>
   <region id="v" top="5" left="5" width="180" height="180"/>
  </layout>
 </head>
 <body>
  <seq>
   <par dur="10min">
    <audio src="rtsp://content-server/content-A-1.mp4" />
    <video src="rtsp://content-server/content-V-1.mp4" region="v" />
   </par>
   <par dur="20min">
    <audio src="rtsp://content-server/content-A-2.mp4" />
    <video src="rtsp://content-server/content-V-2.mp4" region="v" />
   </par>
   <par dur="30min">
    <audio src="rtsp://content-server/content-A-3.mp4" />
    <video src="rtsp://content-server/content-V-3.mp4" region="v" />
   </par>
  </seq>
 </body>
</smil>
```

Fig. 5 Modified SMIL file after content segmentation.

(EX-1006, Fig. 5; EX-1002 ¶171.) Indeed, this is precisely how SMIL-file-based players worked. (EX-1002 ¶171.)

A POSITA would have been motivated to combine Yoshimura and Lindahl's teachings, and to use a time offset in a bookmark (as in Lindahl) and the time information in the SMIL file to determine the audio file for playback. (EX-1002 ¶¶172-76.)

First, that is how bookmarks were used with SMIL-file-based content. (EX-1002 ¶173.)

Second, Young's system provides the ability to download media from servers, and Yoshimura discloses doing so via smaller files. (*Supra* §§VII.A.6-VII.A.7; EX-1002 ¶174) A POSITA would have been motivated to add Lindahl's bookmarking functionality to enable users to resume playback starting from a bookmarked point, which would require downloading the appropriate file. (EX-1002 ¶174.)

Second, because bookmarks were well understood and described by Lindahl, adding bookmark functionality to the Young-Yoshimura system represents a simple substitution of one known element (an offset obtained from a bookmark) for another (a time offset obtained from a user or elsewhere) to obtain predictable results (identifying the media file corresponding to the bookmarked position). (EX-1004 ¶¶[0015], [0035], [0040]; EX-1002 ¶175); *KSR*, 550 U.S. at 417. Similarly, this combination represents using a known technique (obtaining time offset from bookmark) to improve a similar device and method (Young's system) in the same way. (*Id.*) And, it represents applying a known technique (obtaining time offset from bookmark) to a known device and method (Young's downloading media segments from content delivery system) that is ready for improvements and yields predictable results. (*Id.*)

A POSITA would have reasonably expected success in using a time offset (as taught by Lindahl) in the Young-Yoshimura system at least because using such bookmarks was routine, trivial to implement, and widely used. (EX-1002 ¶176.)

2. Sull

Sull's audio bookmark provides "positional information" in the form of "elapsed time" (a time offset). (EX-1005 ¶[0172]; EX-1002 ¶177.) The bookmark is external to the descriptor file (SMIL file) and enables determination of the relevant file so the content can be resumed at the bookmarked position. (EX-1002 ¶177.) Thus, Sull discloses the additional limitation of element 11[b] and Sull, in combination with the references in Ground 1B, render claim 11 obvious. (*Id.* ¶¶177-79.) A POSITA would have been motivated to implement Sull's bookmark to enable the user to start playback at a particular position and would have reasonably expected success for the same reasons as discussed for Lindahl. (*Id.* ¶178.)

XVI. GROUND 2A: CLAIMS 1 AND 6 WOULD HAVE BEEN OBVIOUS IN VIEW OF LEIGHTON AND SEED.

A. Claim 1

1. Preamble

Leighton's content distribution system includes servers and a client machine. (EX-1032, 3:4-16, 5:14-22; EX-1002 ¶182.) A POSITA would have understood that Leighton's client machine has a computer readable storage medium including computer readable code (e.g., operating system, application code) executed by the client

computer. (EX-1002 ¶182.) Thus, if the preamble is limiting, Leighton discloses or renders it obvious. (*Id.* ¶¶181-82.)

2. Element 1[a]

Leighton's client machine "issues an HTTP request" to access a webpage that includes "embedded objects (e.g., images, audio, video, or the like)." (EX-1032, 3:24-28, 5:23-26; 12:53-58 (audio), claim 1; EX-1002 ¶184.) The client fetches the webpage, then "immediately fetch[es] the embedded objects" from servers. (EX-1032, 5:29-41, 7:49-57; EX-1002 ¶184.)

The client fetches embedded objects by sending a request based on the object's URL. (EX-1032, 6:35-36 ("each embedded object that may be served in a page has its own URL"), 8:4-7, 9:20-30 ("After receiving the initial [HTML] page … the browser needs to load the embedded URLs[.]"); EX-1002 ¶185.) Each request is sent to a DNS server that provides a list of provider (ghost) servers based on a URL, as explained below. (EX-1032, 9:20-23; *id.*, 9:48-10:41, 10:54-12:25; EX-1002 ¶185.)

Leighton therefore discloses or renders obvious sending a request (e.g., for an embedded audio object) to a network-based server (e.g., DNS server), the request including a unique identifier (e.g., URL) for identifying an audio stream. (EX-1002 ¶¶183-87.)

3. Element 1[b]

When a client requests an embedded object from a DNS server, the object's URL is interpreted and a DNS server provides the client a list of ghost servers hosting the content. (EX-1032, 3:17-37, 3:57-65 ("the top level DNS server returns a list of low-level DNS servers"), 12:13-16, 12:18-25 ("The low level DNS servers … [return] a list of [server] names"), 5:54-57 (functionality of top-level and low-level DNS servers can be implemented on a single server), 10:36-41 (DNS server provides server list); EX-1002 ¶189.) Leighton's ghost servers are library servers because they store media content that clients request. (EX-1032, 3:5-7, 2:59-62, 12:37-39, 6:26-30, 5:42-6:3, claim 1; EX-1002 ¶190.)

Leighton therefore discloses or renders obvious loading a list of library servers (e.g., ghost server list) from the network-based server (e.g., DNS server), the list of library servers determined in dependence upon the unique identifier (e.g., URL). (EX-1002 ¶¶188-91.)

4. Element 1[c]

Leighton discloses that the top-level and low-level DNS servers track service level statistics. (EX-1032, 10:1-11 (network map "determines where to direct the request" and "is updated continually based on network conditions and traffic"), 11:7-11 (table of ghost servers "is continually updated based on network conditions and traffic in such a way to [e]nsure load balancing and fault tolerance"), 11:35-37

("low-level DNS servers monitor the various ghost servers to take into account their loads"), 10:54-11:6, 11:23-26; EX-1002 ¶193.) This functionality can be implemented on the client. (EX-1032, 5:54-57 (DNS functionality may be separated into a "hierarchy" and implemented on remote servers or client), 9:57-59, 12:53-67 (client software monitors the status of the network); EX-1002 ¶193.)

Thus, Leighton discloses or renders obvious maintaining service level statistics (e.g., network conditions, network traffic, and ghost server loads) for each library server (e.g., ghost server) in the list of library servers (e.g., list of ghost servers). (EX-1002 ¶¶192-94.)

5. Element 1[d][i]

Leighton discloses selecting a ghost server "close to the client machine, that is not overloaded, and that is most likely to already have … the required file." (EX-1032, 5:37-41; EX-1002 ¶196.) Leighton selects a server from the list of ghost servers using maps and lookup tables that are based on service level statistics. (*Supra* §XVI.A.4; EX-1032, 5:54-57 (DNS functionality may be separated and implemented on server or client), 10:54-61, 11:35-37, 12:8-13; EX-1002 ¶196.) Thus, Leighton discloses or renders obvious selecting a first library server (e.g., ghost server) from the list of library servers (e.g., list of ghost servers) in dependence upon the service level statistics (e.g., using mappings based on network conditions, traffic, and ghost server loads). (EX-1002 ¶¶195-97.)

6. Element 1[d][ii]

Leighton discloses that the content servers have audio files. (EX-1032, 5:23-26, 12:55-58.) Leighton does not expressly disclose that each audio file includes a different segment of an audio stream. However, dividing audio streams into multiple files containing segments of the stream was a conventional approach to storing audio on servers. (EX-1001, 2:16-18; *supra* §II.B; EX-1002 ¶199.) Accordingly, it would have been obvious, and a routine design choice, to store Leighton's audio files as smaller files representing segments of an audio stream. (EX-1002 ¶199.)

Even if Leighton did not disclose or render this obvious, it would have been obvious in view of Seed. (EX-1002 ¶200.) Seed discloses a CDN that delivers objects, including "an audio file," from servers to end-users (clients). (EX-1011 ¶[0010].) Seed discloses that "objects can be segmented into chunks" to "enhance the performance of the network." (*Id.* ¶[0057].) "By partitioning streams in this manner, a first part of an object can be served from edge servers quickly." (*Id.*) The remaining chunks can also be stored on edge servers. (*Id.* ¶¶[0058] ("some or all of the objects may be permanently retained in edge server storage"), [0032].) Because Seed "partition[s] streams" into "chunks" that can be stored and downloaded individually, it would have been obvious to a POSITA that the chunks could be stored as files containing a segment of an audio stream. (*Id.* ¶¶[0057], [0010], [0054]; EX-1030, 13:14-34; EX-1002 ¶200.)

Thus, Leighton and Seed render obvious a first library server having a plurality of digital audio files (e.g., Seed's chunks stored as files), each digital audio file in the plurality of digital audio files including a different segment of the audio stream. (EX-1002 ¶¶198-201.)

A POSITA would have been motivated to combine the teachings of Leighton and Seed, and to store Leighton's audio objects as a plurality of smaller files, for several reasons. (*Id.* ¶¶202-06.)

First, Leighton's goal is to provide media content to clients "efficiently, effectively, and reliably," and to "speed-up the delivery" of content. (EX-1032, 2:26-31; 2:43-45.) Seed teaches that segmentation "enhance[s] the performance of the network" and avoids providing entire objects unnecessarily (e.g., when users exit before an object is completely served). (EX-1011 ¶[0057].) A POSITA therefore would have been motivated to segment the audio files served in Leighton to obtain the benefits Seed describes. (EX-1002 ¶203.)

Second, because segmenting media content into smaller files was widely known, and given the similarities between Leighton's and Seed's CDN systems, storing Leighton's audio stream as several files would represent a simple substitution of one known element (multiple-file audio stream) for another (single-file audio stream) to obtain predictable results (improved performance and ability to serve smaller files). (EX-1032, 2:26-67; EX-1011 ¶[0057]; *supra* §II.B; EX-1002 ¶204);

KSR, 550 U.S. at 417. This combination also represents using a known technique (Seed's chunking) to improve a similar device and method (Leighton's CDN) in the same way. (*Id.*) Moreover, this combination applies a known technique (file division) to a known device and method (Leighton's CDN) that is ready for improvement and yields predictable results (enhancing network performance). (*Id.*)

Third, it would have been obvious to try storing Leighton's audio files as smaller files (as taught by Seed) because it was one of a finite number of identified, predictable solutions for storing content on servers. (EX-1002 ¶205.) Only two options existed for storing Leighton's audio objects: (1) as a single file; or (2) as multiple smaller files. Both would have been obvious. (*Id.*)

A POSITA would have reasonably expected success in storing Leighton's audio content in smaller files because the systems and their purposes are similar, storing content as multiple smaller files was known, and the modification would have been trivial. (*Supra* §II.B; EX-1002 ¶206.)

7. Element 1[e]

Leighton discloses downloading content, including audio files, for rendering on a client. (EX-1032, 2:64-67, 4:17-22, 5:23-32 (objects include audio), 12:26-56, 12:59-62 (media player); EX-1002 ¶209.) Because it would have been obvious to store Leighton's audio objects as a plurality of files, this limitation would have been obvious over Leighton. (EX-1002 ¶209.)

Additionally, Seed discloses downloading digital audio files ("chunks") that are segments of an audio stream. (*Supra* §XVI.A.6; EX-1002 ¶210.) These files are downloaded for playback by the client, including through a media player. (EX-1011 ¶[0051]); EX-1002 ¶210.) Accordingly, this limitation would have been obvious in view of Leighton and Seed. (EX-1002 ¶¶208-11.)

8. Element 1[f][i]

Leighton discloses selecting a second library (ghost) server from the list when "it is deemed that the client's connection can be improved by changing the server." (EX-1032, 12:59-67; *id.* ("user can be directed to an alternate server in mid-stream"); *id.*, 12:53-55 (performance "improved by dynamically changing the server to which a client is connected based on changing network conditions").) Leighton also discloses selecting a second server (e.g., "buddy" server) "if the ghost goes down." (*Id.*, 13:1-4, 12:18-25 (if buddy system fails, client contacts "one of the other ghosts on the list"); EX-1002 ¶213.) Leighton therefore discloses and renders obvious selecting a second library server from the list of servers in dependence upon the service level statistics. (EX-1002 ¶¶212-14.)

9. Element 1[f][ii]

Leighton discloses replicating content across multiple ghost servers. (EX-1032, 3:42-49 (content "distributed and replicated through a collection of servers"), 12:37-39; EX-1002 ¶216.) The second server would have a copy of the media

content because it serves as a backup to provide the same content. (EX-1002 ¶216.) Accordingly, Leighton discloses or renders obvious that the selected second server has a copy of the plurality of digital audio files. (*Id.* ¶¶215-17.)

10. Element 1[g]

Leighton discloses that the user can be "directed to an alternate server in mid-stream." (EX-1032, 12:53-67; *id.*, 12:53-55 (change server), 13:1-4 (second "buddy" server).) It would be obvious for the stream to comprise multiple audio files. (*Supra* §§XVI.A.4, XVI.A.9.) Thus, downloading the remainder of the stream from a second server would include downloading a second digital audio file for play-back as claimed. (EX-1002 ¶219.) Accordingly, Leighton and Seed render obvious downloading a second other digital audio file (in second portion of media stream) from the second library server (alternate server) for playback with the media player. (EX-1002 ¶¶218-21.)

B. Claim 6

A POSITA would have understood that Leighton's service level statistics include historical transfer rates because they provide "network conditions and traffic" for each server (*supra* §XVI.A.4), and because transfer rates were a conventional measurement of network and server conditions. (*See supra* §VII.B; EX-1002 ¶223.)

Alternatively, it would have been obvious to include historical transfer rates in Leighton's service level statistics for reasons discussed above. (*Supra* §VII.B;

EX-1002 ¶224.) A POSITA would have been motivated to include server historical transfer rates because Leighton sought "fast and reliable [] access" to content, and servers' historical transfer rates would indicate their speed and reliability. (EX-1032, 13:55-58; EX-1002 ¶224.) And, because measuring transfer rates was well known, this represents the substitution of one known element (historical transfer rates) for another (Leighton's statistics) to achieve predictable results (measuring server speed). (*Supra* §VII.B; EX-1002 ¶224.) A POSITA would have reasonably expected success in maintaining historical transfer rates and using them in Leighton's system because maintaining and using such statistics for this purpose was well known. (*Id.*)

Accordingly, Leighton discloses or renders obvious the additional limitation in claim 6, and Leighton and Seed render claim 6 obvious. (EX-1002 ¶¶222-26.)

XVII. GROUND 2B: CLAIMS 1, 2, 6, AND 10 WOULD HAVE BEEN OBVIOUS IN VIEW OF LEIGHTON, SEED, AND LINDAHL.

A. Claim 1

As discussed, Leighton and Seed render claim 1 obvious. (*Supra* §XVI.A; EX-1002 ¶227.) Claim 1 would also have been obvious in further view of Lindahl, which discloses the limitations requiring a plurality of digital audio files representing segments of the audio stream (e.g., limitations 1[d][ii] and 1[f][ii]). (EX-1002 ¶227.)

Lindahl discloses a client-server system for delivering audiobooks. (EX-1004 ¶[0001], Fig. 1.) Lindahl explains that audiobooks "typically contain a large amount of data -for example it would not be unusual for an audio book to include data for nine hours of listening." (*Id.* ¶[0007].) This makes it "difficult to download it to small devices with a small storage space" and the "download time is too long to provide a practical implementation for audio books, especially over wireless narrowband links." (*Id.*)

To overcome these problems, Lindahl discloses that each audiobook datafile is "sub-dividable," which enables the "download of smaller portions of the larger datafile." (*Id.* ¶[0010]; *id.* ¶[0018] (individual data files segmented into multiple "sub-portions"), claims 1 (original file "subdivided into two or more transmission portions, each portion being independently transmittable to the client"), 3 (audio file); EX-1002 ¶229.) Lindahl expressly discloses that the smaller portions may be individual files. (EX-1004 ¶¶[0022] (each chapter may be its own audio file), [0018] (segmented sub-portions are "individually searchable and retrievable").) This permits the downloading of audio books "on a chapter per chapter basis … so that the system may be used in conjunction with small client devices." (*Id.* ¶¶[0023], [0033] (download on chapter-by-chapter basis), [0045].)

Thus, Lindahl discloses or renders obvious a server having a plurality of digital audio files (e.g., audiobook chapters), each digital audio file (e.g., chapter file)

in the plurality of digital audio files including a different segment (e.g., chapter) of the audio stream. (EX-1002 ¶¶228-30.)

A POSITA would have been motivated to combine the teachings of Leighton, Seed, and Lindahl, and to store Leighton's audio streams (and Seed's "chunks") as a plurality of smaller files as taught by Lindahl, for several reasons. (*Id.* ¶¶231-36.)

First, Lindahl suggests doing so because Lindahl teaches that storing audio books on servers in a plurality of smaller files: (a) makes it easier to download large audio files to small devices with less storage (EX-1004 ¶[0022]); (b) reduces download times, especially over wireless narrowband links (*id.*); and (c) makes smaller portions of the audio file searchable and downloadable (*id.* ¶[0018]). A POSITA would have been motivated to obtain these benefits in Leighton's system. (EX-1002 ¶232.)

Second, Leighton sought to "speed-up the delivery" of content and to provide content "reliably and economically." (EX-1032, 2:43-48, 2:26-31; EX-1002 ¶233.) A POSITA would have understood that segmenting large audio files into smaller files for storage and transmission, as taught by Lindahl, would further these goals. (EX-1002 ¶233.)

Third, because segmenting media content into smaller files was widely known and expressly disclosed by Lindahl, storing Leighton's audio content as several

smaller files represents nothing more than a simple substitution of one known element (multi-file audio stream) for another (single-file audio stream) to obtain predictable results (efficient storage and transmission of content across various networks and to clients with less storage). (*Supra* §II.B (widely known to segment files); EX-1002 ¶234; EX-1001, 2:16-19); *KSR*, 550 U.S. at 417. This combination represents using a known technique (storing and sending content as smaller files) to improve a similar device and method (Leighton's content delivery) in the same way (e.g., faster downloads, access by smaller devices, and individually searchable and retrievable portions of the content). (*Id.*) Moreover, this combination applies a known technique (storing and delivering multi-file content) to a known device and method (Leighton's CDN) that is ready for improvement and yields predictable results (increased performance and flexibility). (*Id.*)

Fourth, storing and delivering Leighton's audio files as several smaller files would have been obvious to try because it is one of a finite number of identified, predictable solutions (storing the content as one large file or several smaller files) for storing content on servers. (EX-1002 ¶235.)

For these same reasons, a POSITA would have reasonably expected success in implementing this modification to Leighton's system. (*Id.* ¶236.)

B. Claim 2

Lindahl discloses that a request can use an ISBN as a unique identifier of requested content. (EX-1004 ¶¶[0039] (user may "request an audio book by providing the server with a suitable unique identifier associated with the chosen book"), [0030] (ISBN is a "unique identifier associated with a stored audio book"), [0017] (media content stored with ISBN), [0035] ("part or the entire book is transmitted to the client device"); EX-1002 ¶239.) Accordingly, Lindahl discloses sending a request to a server where the request includes an ISBN. (EX-1002 ¶¶238-40.)

A POSITA would have been motivated to combine the teachings of Leighton and Lindahl, and to use an ISBN as a unique identifier in the client request. (*Id.* ¶¶241-46.)

First, Leighton suggests it because Leighton discloses that the audio stream's unique identifier (e.g., modified URL) may contain a "serial number." (EX-1032, 8:2-15.) Lindahl's ISBN is a serial number for an audiobook, and Lindahl teaches using the ISBN to retrieve content. (EX-1004 ¶¶[0039], [0030], [0017]; EX-1002 ¶242.)

Second, Leighton discloses requesting content using an HTTP request and Lindahl discloses that such a request can include an ISBN to identify the requested content. (EX-1032, 1:15-34, 8:3-12; EX-1004 ¶¶[0024], [0030]; EX-1002 ¶243.)

Third, because ISBNs were disclosed by Lindahl and well understood, the combination of Leighton and Lindahl represents a simple substitution of one known element (a request that includes ISBN) for another (Leighton's request) to obtain predictable results (accessing content by ISBN). (EX-1004 ¶[0030]; EX-1002 ¶244); *KSR*, 550 U.S. at 417. Similarly, the combination represents the same simple substitution of a known element (standardized identifier) for another (Leighton's identifier). (*Id.*)

Fourth, the combination applies a known technique (identifying content via ISBN) to a known device and method (Leighton's CDN) that is ready for improvement and yields predictable results. (EX-1002 ¶245.) For these same reasons, a POSITA would have reasonably expected success in incorporating an ISBN (as taught by Lindahl) into Leighton's modified URL. (*Id.* ¶246.)

C. Claim 6

Leighton discloses the additional limitation of claim 6, and therefore Leighton, Seed, and Lindahl render this claim obvious for the reasons set forth in Grounds 2A (claim 6) and 2B (claim 1). (EX-1002 ¶248; *supra* §§XVI.B, XVII.A.)

D. Claim 10

Lindahl discloses sending "authenticators" such as the device IMEI number or the SIM card MSISDN to the server so that only registered users can access the

audiobook content. (EX-1004 ¶¶[0020], [0028]-[0029], [0039] (server receives authentication request).) Accordingly, Lindahl discloses or renders obvious the additional limitation of claim 10. (EX-1002 ¶250.) A POSITA would have been motivated to implement this feature in Leighton's CDN to provide access control, and would have reasonably expected success in doing so given the similarity of the systems and that such access control was widely known. (*Id.*) Thus, claim 10 would have been obvious over Leighton, Seed, and Lindahl. (*Id.* ¶¶249-51.)

XVIII. GROUND 2C: CLAIM 2 WOULD HAVE BEEN OBVIOUS IN VIEW OF LEIGHTON, SEED, AND KATE.

Kate discloses the additional limitation of claim 2. (*Supra* §IX; EX-1002 ¶252.)

A POSITA would have been motivated to combine the teachings of Leighton and Kate to use an ISBN as a unique identifier (as taught by Kate) for the same reasons that a POSITA would have been motivated to modify Young to use an ISBN. (*Supra* §IX; EX-1002 ¶253.) For example, Leighton discloses requesting content using a modified URL and Kate discloses using a unique identifier with an ISBN for the same purpose; the combination represents a simple substitution of one known element (identifying content via ISBN) for another (modified URL) to obtain predictable results (accessing content); it represents the same simple substitution of a known element for another to yield predictable results; and it represents using a

known technique (ISBN) to improve a similar device and method (identifying content) in the same way. (EX-1002 ¶253.)

A POSITA would have reasonably expected success because ISBNs were well understood as content identifiers and because Kate uses the ISBN in a system similar to Leighton's. (*Id.* ¶254.)

XIX. GROUND 2D: CLAIM 5 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 2A OR 2B REFERENCES AND SULL.

Sull discloses the additional element of claim 5. (*Supra* §X.) A POSITA would have been motivated to combine the teachings of Leighton and Sull to obtain Leighton's unique identifier (e.g., modified URL) from a bookmark. (EX-1002 ¶¶257-60.)

First, Leighton discloses accessing and rendering media content (e.g., audio files). Sull discloses using bookmarks to identify media content and immediately access a desired position rather than re-starting at the beginning, thereby providing an improved user experience. (*Supra* §X; EX-1002 ¶258.)

Second, because bookmarks were well known and taught by Sull, the combination represents using a known technique (accessing content via bookmark) to improve a similar device and method (Leighton's) to obtain predictable results (accessing a specific position within requested content). (EX-1002 ¶259.) Similarly, this combination applies a known technique (bookmarking) to a known device and

method (Leighton's CDN) that is ready for improvement and yields predictable results (playing content from specific position). (*Id.*)

A POSITA would have reasonably expected success because bookmarks were well understood and because Leighton and Sull disclose using similar unique identifiers (URIs and URLs) to identify content. (*Supra* §§XVI.A.2, X; EX-1002 ¶260.)

XX. GROUND 2E: CLAIM 18 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 2A OR 2B REFERENCES AND GANESAN.

Ganesan discloses or renders obvious the additional limitation of claim 18. (*Supra* §XI.) The references in Ground 2A or 2B, in view of Ganesan, render claim 18 obvious. (*Supra* §XI; EX-1002 ¶262.) A POSITA would have been motivated to combine the teachings of Leighton and Ganesan to determine the size of media content segments based on throughput in Leighton's system, and would have reasonably expected success in doing so, for the same reasons that a POSITA would have been motivated to do so for Young. (*Supra* §XI; EX-1002 ¶263.)

XXI. GROUND 2F: CLAIM 3 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 2B OR 2C REFERENCES AND GANESAN.

The references presented in Ground 2B or 2C and Ganesan render claim 3 obvious. (*Supra* §§XI-XII; EX-1002 ¶265.)

XXII. GROUND 2G: CLAIM 4 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 2B OR 2C REFERENCES, GANESAN, AND SULL.

The references presented in Ground 2B or 2C, Ganesan, and Sull render claim 4 obvious. (*Supra* §XIII; EX-1002 ¶266.)

XXIII. GROUND 2H: CLAIM 10 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 2A OR 2B REFERENCES AND SHAPIRO.

Shapiro discloses the additional limitation of claim 10. (*Supra* §XIV.) A POSITA would have been motivated to include login information such as a username in the user's request in Leighton's system for several reasons. (EX-1002 ¶¶268-71.)

First, Leighton provides media content, and including login information in the request, as taught by Shapiro, would provide access control to Leighton's system. (*Id.* ¶269.)

Second, using login information when accessing media content on servers was well known. (*Supra* §XIV.) Accordingly, the combination represents a simple substitution of one known element (request including login information) for another (network request without login information) to obtain predictable results (controlling content access based on login information). (EX-1002 ¶270.) Similarly, this combination represents using a known technique (login information) to improve a similar device and method (content delivery) in the same way. (*Id.*) It also applies

a known technique (including login information in requests) to a known device and method (Leighton's system) that is ready for improvement and yields predictable results (the ability to control access). (*Id.*) A POSITA would have reasonably expected success because including login information in a request was trivial, well-known, and explained by Shapiro and Lindahl. (*Id.* ¶271.)

XXIV. GROUND 2I: CLAIM 11 WOULD HAVE BEEN OBVIOUS IN VIEW OF THE GROUND 2B REFERENCES AND YOSHIMURA.

Claim 11 would have been obvious in view of Leighton, Seed, and Lindahl (as described in Ground 2B), and further in view of Yoshimura. (EX-1002 ¶274.) Yoshimura and Lindahl together render obvious the additional limitations recited in claim 11. (*Supra* §§VIII.C, XV; EX-1002 ¶274.)

A. Motivation to Use Yoshimura's SMIL File

A POSITA would have been motivated to combine the teachings of Yoshimura with the references in Ground 2B for several reasons. (EX-1002 ¶¶275-78.)

First, because Leighton (alone or with Seed and Lindahl) discloses that the audio content can be provided as multiple files, a POSITA would have been motivated to look to methods for accessing, navigating, and rendering such multi-file streams. (*Id.* ¶276.) Yoshimura discloses using a SMIL file for this purpose, including providing conventional controls like skipping forwards and backwards. (*Supra* §VIII.C.2; EX-1002 ¶276.)

Second, using SMIL files to access media content on the internet was widely known and supported. (EX-1006, 1779; EX-1007, 5 (showing SMIL media content accessed in web browsers), 18 (SMIL is "widely supported and distributed"), 63; EX-1090, 1-2, 8-16; EX-1002 ¶277.) Downloading and using a SMIL file as taught in Yoshimura would therefore represent a simple substitution of one known element (SMIL file identifying media content) for another (HTML file identifying media content). (EX-1002 ¶277.) This combination represents using a known technique (accessing/synchronizing content using SMIL file) to improve a similar device and method (accessing content using HTML file) in the same way. (*Id.*) Moreover, this combination applies a known technique (SMIL file to access/synchronize media) to a known device and method (Leighton's) that is ready for improvements and yields predictable results. (*Id.*)

A POSITA would have reasonably expected success in using a SMIL file in Leighton's system because SMIL files were conventional for accessing media content via the internet. (EX-1002 ¶278.) Moreover, because HTML and SMIL are similar markup languages that identify media content on the internet, a POSITA would have reasonably expected success in using a SMIL file to access media content in addition to or in place of Leighton's HTML file. (EX-1090, 1 (SMIL similar to HTML), 7-8, 19, 50-51, 54; EX-1002 ¶278.)

B. Motivation to use Lindahl's Bookmark

A POSITA also would have been motivated to determine the audio file for playback using a time offset from Lindahl's bookmark for several reasons. (EX-1002 ¶¶279-82.)

First, Leighton discloses or renders obvious downloading segments of media content. (EX-1002 ¶280.) Lindahl discloses using a time offset from a bookmark to identify the segment a client should download and the position at which it should begin playback. (EX-1004 ¶¶[0015], [0035], [0040].) A POSITA would have recognized that Lindahl's bookmark provides desirable functionality—quickly accessing a desired position in media content such as audiobooks. (*Id.* ¶[0035]; EX-1005 ¶[0005]; EX-1002 ¶280.)

Second, because bookmarks were well understood, the combination of Leighton and Lindahl's bookmarks represents nothing more than the addition of one known element (bookmark with time offset) to another (Leighton's system) to obtain predictable results (playback from a marked position). (EX-1002 ¶281.) Similarly, this combination represents using a known technique (obtaining a time offset from a bookmark as in Lindahl) to improve a similar device and method (Leighton's). (*Id.*) And, this combination represents applying a known technique (obtaining a time offset from bookmark) to a known device and method (Leighton's) that is ready for

improvements and yields predictable results (the ability to identify the segment and position for resuming playback). (*Id.*)

A POSITA would have reasonably expected success when combining Leighton and Lindahl because using multimedia bookmarks was well known. (EX-1002 ¶282.)

XXV. SECONDARY CONSIDERATIONS OF NONOBVIOUSNESS

Where, as here, a strong *prima facie* obviousness showing exists, secondary considerations may not dislodge the obviousness conclusion. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.,* 485 F.3d 1157, 1162 (Fed. Cir. 2007). Petitioners are aware of no evidence supporting a claim for secondary considerations.

XXVI. DISCRETIONARY DENIAL UNDER §314(A) IS NOT APPROPRIATE.

Efficiency, fairness, and the merits support institution. *Apple v. Fintiv,* IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020) ("*Fintiv*").

A. Factor 1: Potential Stay

On March 20, 2024, PO sued Petitioners for infringement of the '740 patent in *Audio Pod IP, LLC v. Amazon.com, Inc.*, 2:24-cv-00185 (E.D. Va.) ("*Audio Pod I*" or "the Litigation"). Petitioners will move to stay the Litigation pending resolution of this and related IPRs challenging the patents asserted in the Litigation. The EDVA routinely stays cases pending IPR proceedings, including pre-institution.

See, *e.g.*, *Sec. First Innovations, LLC v. Google LLC*, No. 2:23-cv-00097, 2024 WL 234720 (E.D. Va. Jan. 22, 2024); *Sharpe Innovations, Inc. v. T-Mobile USA, Inc.*, No. 2:17-cv-00351, 2018 WL 11198604 (E.D. Va. Jan. 10, 2018).

On March 14, 2025, Petitioner Audible, Inc. ("Audible") filed a declaratory judgment action, seeking a declaration that Audible does not infringe the '740 patent, against PO in *Audible, Inc. v. Audio Pod IP, LLC*, 1:25-cv-02158 (S.D.N.Y.) (the "Audible DJ Action"). That action seeks a declaration of noninfringement only; the validity of the '740 patent is currently not at issue. However, Audible expects validity to become an issue in that case and, once it does, Audible expects to move to stay the Audible DJ Action in view of this IPR.

Thus, this factor weighs against denial.

B. Factor 2: Proximity of Trial to FWD

The EDVA has not set a trial date in the Litigation. The median time to trial in civil cases in the EDVA for 2024 was 14.6 months[2], but it is clear a longer schedule is required here as the case has already been pending for nearly 12 months with

[2] *See* U.S. District Courts–Combined Civil and Criminal Federal Court Management Statistics (December 31, 2024), *available at* https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf.

virtually no activity. (*See infra* §XXVI.C.) The Audible DJ Action was filed recently, has no trial date, validity is not currently at issue, and SDNY's time-to-trial of 39.3 months is much longer than this proceeding. Thus, this factor weighs against denial. *Amazon.com, Inc. v. Nokia Technologies OY*, IPR2024-01140, Paper 9 at 9 (P.T.A.B. Feb. 12, 2025) (factor weighs against denial when there is no trial date); *Aptiv Services US, LLC v. Microchip Technology, Inc.*, IPR2024-00646, Paper 11 at 32 (P.T.A.B. Sept. 25, 2024) (same); *see Ericsson Inc. v. XR Communications LLC*, IPR2024-00613, Paper 9 at 34 n.12 (P.T.A.B. Oct. 9, 2024) ("median-time-to trial information" not useful where circumstances "do[] not reflect the normal course of a litigation").

C. Factor 3: Investment in Parallel Proceeding

PO filed its complaint in the Litigation on March 20, 2024. Petitioners filed a motion to dismiss or transfer on May 31, 2024 and no hearing date has been set for that motion. Otherwise, the parties have invested very little in the Litigation. Petitioners have not answered the complaint. The parties have not had a Rule 26(f) conference and fact discovery has not yet opened. The parties have not exchanged proposed claim constructions or submitted claim construction briefs. No expert reports have been served. No case schedule has been set. Thus, much work still remains, including fact discovery, claim construction, expert reports, expert discovery,

dispositive motions, pretrial motions, and trial. Likewise, there has been no investment in the Audible DJ Action.

Because the remaining investment in the Litigation and Audible DJ Action significantly outweighs any investment made thus far, this factor weighs against denial. *Samsung Electronics Co. v. Empire Technology Development LLC*, IPR2024-00896, Paper 15 at 13 (P.T.A.B. Dec. 13, 2024); *Ericsson*, IPR2024-00613, Paper 9 at 34-35; *Amazon.com*, IPR2024-01140, Paper 9 at 9-10.

D. Factor 4: Overlapping Issues

If this IPR is instituted and the Litigation and/or Audible DJ Action are stayed, Petitioners could not pursue in those proceedings any invalidity ground raised or that could have been reasonably raised in this IPR. *Cal. Inst. of Tech. v. Broadcom Ltd.*, 25 F.4th 976 (Fed. Cir. 2022). If this IPR is instituted and the Litigation and/or Audible DJ Action are not stayed, Petitioners hereby stipulate not to pursue in those proceedings any ground of invalidity, against any claim challenged herein, that was raised or reasonably could have been raised in this Petition. This factor weighs heavily against discretionary denial. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (P.T.A.B. Dec. 1, 2020).

E. Factor 5: The Parties

The parties are the same, but it is unlikely that the Litigation or Audible DJ Action will go to trial before a final written decision is entered in this IPR. Thus,

this factor is neutral. *See Google LLC v. Jawbone Innovations, LLC*, IPR2022-00630, Paper 10 at 14 (P.T.A.B. Sept. 13, 2022).

F. Factor 6: Other Circumstances

The merits of this Petition are compelling, as demonstrated above, which favors institution. *Fintiv*, IPR2020-00019, Paper 11 at 18. Further, denying institution would negate Congress's intent in providing a 1-year period to file petitions and would encourage forum shopping as patent owners look to shield their patents from PTAB scrutiny by seeking judges with aggressive case schedules.

Thus, the Board should not decline institution under §314(a).

XXVII. DISCRETIONARY DENIAL UNDER §325(D) IS NOT APPROPRIATE.

The Office has not considered the references herein. Nor has the Office considered "substantially the same prior art or arguments." 35 U.S.C. §325(d). This is sufficient to avoid denial. *Shenzen Chic Elecs. v. Pilot, Inc.*, IPR2023-00810, Paper 12 at 21 n.11 (P.T.A.B. Nov. 8, 2023) (denial inappropriate where challenges based on new art/arguments "address all challenged claims"). The references here disclose each claim element the Examiner thought was missing from the prior art. (*Supra* §III.B.) Accordingly, they are not—and could not be—cumulative of previously-considered references, absent material error by the Examiner. *See Quasar Sci. LLC*

v. Colt Int'l Clothing, Inc., IPR2023-00611, Paper 10 at 14 (P.T.A.B. Oct. 10, 2023). Thus, the Board should not deny institution under §325(d).

XXVIII. STATEMENT REGARDING PARALLEL PETITIONS

This Petition is one of two that Petitioners are concurrently filing against the '740 patent. The petitions challenge different claims and are necessary because the two independent claims of the '740 patent are directed to different subject matter. Claims 1-6, 10-11, and 18, addressed herein, recite sending a request for audio to a server, loading a server list, maintaining service level statistics for servers, selecting a first server, downloading content, selecting a second server, and downloading content from the second server. Claims 12-17, by contrast, recite creating a bookmark using a time offset and descriptor file, selecting a file from a plurality of audio files, checking whether the file is resident on the computer, and downloading and playing the file. Each petition addresses one lengthy independent claim (and its dependents). Each petition is based on different prior art references. Thus, the petitions represent materially different challenges to a unique subset of claims, which supports institution. *Align Tech., Inc. v. 3Shape A/S*, IPR2021-01309, Paper 11 at 11-13 (P.T.A.B. Feb. 9, 2022); *Samsung Elecs. Co., Ltd. v. Mojo Mobility Inc.*, IPR2023-01089, Paper 11 at 25-27 (P.T.A.B. Jan. 11, 2024).

Both petitions rely on the same expert declarant and are being filed concurrently. Thus, the cases can track the same schedule and the parties can maximize

the efficiency of depositions, briefing, and oral argument. Also, any potential inefficiency or disadvantage to PO can be resolved by consolidating the two proceedings. 35 U.S.C. §325(d); 37 C.F.R. §42.122. To the extent there is overlap between the two proceedings, these considerations favor institution. *Visa, Inc. v. Cortex MCP, Inc.*, IPR2024-00487, Paper 8 (P.T.A.B. Aug. 2, 2024).

PO has not yet identified which claims it will assert in the Litigation. Accordingly, the Board should allow Petitioners to explain and describe in sufficient detail where each limitation of each of the claims is disclosed or taught by the prior art. *See AliveCor, Inc. v. Apple Inc.*, IPR2023-00949, Paper 8 at 22-31 (P.T.A.B. Jan. 9, 2024). For this reason, fairness and the public benefit support institution of both petitions.

Petitioners provide the following information to aid the Board's institution decision.

(1) Ranking of Petitions – Petitioners request that the Board consider the merits of the concurrently-filed petition (IPR2025-00765) first.

(2) Succinct Explanation of Differences – This Petition challenges independent claim 1 and its dependents; the concurrently-filed petition challenges independent claim 12 and its dependents, which have a different focus.

XXIX. CONCLUSION

Amazon requests the Board institute trial and cancel all challenged claims.

XXX. MANDATORY NOTICES, GROUNDS FOR STANDING, AND FEE PAYMENT

Pursuant to 37 C.F.R. §42.8(a)(1), the mandatory notices identified in 37 C.F.R. §42.8(b) are provided below as part of this Petition.

A. Real Party-In-Interest (37 C.F.R. §42.8(b)(1))

Amazon.com, Inc., Amazon.com Services LLC, Amazon Web Services, Inc., and Audible, Inc. are the real parties-in-interest.

B. Related Matters (37 C.F.R. §42.8(b)(2))

PO asserted the '740 patent against Petitioners in a patent infringement lawsuit captioned *Audio Pod IP, LLC v. Amazon.com, Inc. et al.*, No. 2:24-cv-00185 (E.D. Va., filed March 20, 2024). Audible also filed a complaint for declaratory judgment of noninfringement of the '740 patent, captioned *Audible, Inc. v. Audio Pod IP, LLC*, No. 1:25-cv-02158 (S.D.N.Y., filed March 14, 2025). Petitioners further filed the following IPR petitions challenging claims of this patent and related patents:

Case Number	Challenged Patent	Challenged Claims
IPR2025-00757	U.S. Pat. No. 10,091,266	1-13
IPR2025-00765	U.S. Pat. No. 8,738,740	12-17
IPR2025-00768	U.S. Pat. No. 10,805,111	1-16
IPR2025-00769	U.S. Pat. No. 9,954,922	1-20

C. Lead and Backup Counsel (37 C.F.R. §42.8(b)(3))

Petitioners provide the following designation of counsel, all of whom are included in Customer No. 20,995 identified in Petitioners' Power of Attorney.

Lead Counsel	**Back-up Counsel**
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D. Service Information (37 C.F.R. §42.8(b)(4))

Please direct all correspondence to lead counsel and back-up counsel at the addresses shown above. Petitioners also consent to electronic service by email to BoxSEAZNL2185LP@knobbe.com.

E. Grounds for Standing (37 C.F.R. §42.104(a))

Petitioners certify that the '740 patent is available for IPR and that Petitioners are not barred or estopped from requesting IPR on the identified grounds. This petition is being filed within one year of service of the original complaint against Petitioners in the district court litigation.

F. Payment of Fees (37 C.F.R. §42.15(a))

The Office may charge the §42.15(a) fee to Deposit Account No. 11-1410. Review of nine claims is requested. Payment for any additional fees due may be charged to the above-referenced Deposit Account.

Respectfully submitted,

KNOBBE MARTENS OLSON & BEAR, LLP

Dated: March 24, 2025

/ Colin B. Heideman/

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APPENDIX

Listing of Claims from U.S. 8,738,740	
Claim 1	
1[pre]	A non-transitory computer readable storage medium including computer readable code, which when executed by a computer, causes said computer to:
1[a]	send a request to a network-based server, the request including a unique identifier for identifying an audio stream;
1[b]	load a list of library servers received from the network-based server, the list of library servers determined in dependence upon the unique identifier;
1[c]	maintain service level statistics for each library server in the list of library servers;
1[d]	select a first library server from the list of library servers in dependence upon the service level statistics, the first library server having a plurality of digital audio files, each digital audio file in the plurality of digital audio files including a different segment of the audio stream;
1[e]	download a first digital audio file from the plurality of digital audio files for playback with a media player
1[f]	select a second library server from the list of library servers in dependence upon the service level statistics, the second library server having a copy of the plurality of digital audio files; and
1[g]	download a second other digital audio file from the second library server for playback with the media player.
Claim 2	
--	The non-transitory computer readable storage medium according to claim 1, wherein the unique identifier is an ISBN number.

Listing of Claims from U.S. 8,738,740	
Claim 3	
--	The non-transitory computer readable storage medium according to claim 2, wherein a size of each digital audio file in the plurality of digital audio files is selected in dependence upon network throughput rates.
Claim 4	
--	The non-transitory computer readable storage medium according to claim 3, wherein the unique identifier is obtained from one of a bookmark structure, a card catalog structure, and an advertising structure.
Claim 5	
--	The non-transitory computer readable storage medium according to claim 1, wherein the unique identifier is obtained from one of a bookmark structure, a card catalog structure, and an advertising structure.
Claim 6	
--	The non-transitory computer readable storage medium according to claim 1, wherein the service level statistics include historical transfer rates for each library server in the list of library servers.
Claim 10	
--	The non-transitory computer readable storage medium according to claim 1, wherein the request includes login information.
Claim 11	
11[pre]	The non-transitory computer readable storage medium according to claim 1, wherein the computer code is configured to cause said computer to:

Listing of Claims from U.S. 8,738,740	
11[a]	download a descriptor file from the first library server, the descriptor file for ordering the plurality of digital audio files, the descriptor file including at least one of a start time, an end time, and a play time of each digital audio file in the plurality of digital audio files within the audio stream,
11[b]	wherein the computer determines the first digital audio file for playback using a time offset external to the descriptor file and the at least one of the start time, end time, and play time of each digital audio file in the plurality of digital audio files.
Claim 18	
--	The non-transitory computer readable storage medium according to claim 1, wherein a size of each digital audio file in the plurality of digital audio files is selected in dependence upon network throughput rates.

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. §42.24(d), the undersigned certifies that this **PETITION FOR INTER PARTES REVIEW OF U.S. PATENT NO. 8,738,740** contains 13,975 words according to the word-processing program used to prepare this paper. The foregoing word count complies with the 14,000-word type-volume limit specified by 37 C.F.R. §42.24(a)(1).

Dated: March 24, 2025

By: */Colin B. Heideman /*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date below a copy of this **PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,738,740** and **ACCOMPANYING EXHIBITS** are being served on March 24, 2025 via Federal Express overnight mail on counsel of record for U.S. Patent No. 8,738,740 at the Correspondence Address of record below:

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A courtesy copy is also being served via email on counsel for the patent holder in the pending district court litigation:

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