Trials@uspto.gov
571-272-7822

Paper 35
Entered: June 12, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HULU, LLC,
Petitioner,

v.

INTERTAINER, INC.,
Patent Owner.

Case CBM2014-00052
Patent 8,479,246

Before MICHAEL W. KIM, BRIAN P. MURPHY,
and JENNIFER M. MEYER, *Administrative Patent Judges*.

MEYER, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

We have jurisdiction to hear this covered business method patent review under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73. For the reasons discussed herein, we determine that Petitioner has shown, by a preponderance of the evidence, that claims 1–3, 5, 8, 10, 11, and 13–15 of U.S. Patent No. 8,479,246 (Ex. 1001, "the '246 patent") are unpatentable.

A. Procedural History

Hulu, LLC ("Petitioner") filed a Petition (Paper 8, "Pet.") seeking a covered business method patent review of claims 1–30 ("the challenged claims") of the '246 patent pursuant to § 18(a) of the Leahy-Smith America Invents Act ("AIA").[1] Petitioner included a Declaration of V. Michael Bove, Jr. (Ex. 1008, "Bove Declaration") to support its positions.

On June 23, 2014, we instituted a covered business method patent review of some of the challenged claims on the following grounds of unpatentability: claims 1–3, 5, 8, 10, 11, 13, 14, 16–21, 23, 25, 27, and 29 as unpatentable under 35 U.S.C. § 102(b) as anticipated by Chen;[2] and claims 15 and 28 as unpatentable under 35 U.S.C. § 103 as obvious over Chen and Hartanto.[3] Paper 10 ("Inst. Dec.").

---

[1] Pub. L. 112-29, 125 Stat. 284, 329 (2011).

[2] EP 0 840 241 A1, published May 6, 1998 (Ex. 1003).

[3] Felix Hartanto & Harsha Sirisena, *Hybrid Error Control Mechanism for Video Transmission in the Wireless IP Networks*, PROCEEDINGS OF THE IEEE TENTH WORKSHOP ON LOCAL AND METROPOLITAN AREA NETWORKS (Nov. 1999) (Ex. 1010).

Subsequent to institution, Intertainer, Inc. ("Patent Owner") filed a Patent Owner Response (Paper 19, "PO Resp."), and Petitioner filed a Reply (Paper 22, "Pet. Reply") thereto.

Patent Owner also has filed with the Office a statutory disclaimer under 37 U.S.C. § 1.321(a) with respect to claims 16–21, 23, 25, and 27–29. PO Resp. 3; Ex. 2003. As a result, only claims 1–3, 5, 8, 10, 11, and 13–15 ("the reviewed claims") remain under review in this proceeding. *See* 37 C.F.R. § 42.207(e).

Also before us is Petitioner's Motion to Exclude (Paper 25, "Mot. to Excl."), Patent Owner's Opposition to the Motion (Paper 29), and Petitioner's Reply (Paper 30).

An oral hearing was held on February 3, 2015. A transcript of the hearing is included in the record. Paper 34 ("Tr.").

B. Related Proceeding

Patent Owner has asserted the '246 patent against Petitioner in *Intertainer, Inc. v. Hulu, LLC*, No. 2:13-cv-05499 (C.D. Cal.). Pet. 4.

C. The '246 Patent

The '246 patent, titled "System and Method for Interactive Video Content Programming," issued on July 2, 2013. The '246 patent relates to a method for creating an interactive video, which includes one or more interface links associated with video content being displayed. Ex. 1001, 1:59–60, 2:27–28. When a user interacts with an interface link, the video content is paused, and the user is able to view ancillary content linked to the interface link over a network. *Id.* at 2:27–48, 6:59–7:22. When the user elects to continue viewing the video content, the video is un-paused. *Id.* at 7:22–26.

D. Illustrative Claim

Of the reviewed claims, claim 1 is independent, and each of claims 2, 3, 5, 8, 10, 11, and 13–15 depends directly from claim 1. Claim 1 of the ’246 patent, reproduced below, is illustrative of the reviewed claims:

> 1. A method for creating an interactive video, the method comprising:
>
> encoding and storing the video onto a remote storage medium at a first site;
>
> creating a link program adapted to both:
>
> (a) interrupt streaming of the video at the remote storage medium to prevent streaming of the video over an Internet Protocol (IP)-based network to a second site; and
>
> (b) access ancillary content accessible over the network with a universal resource locator (URL) to a remote site where the ancillary content is stored, the link program linking the ancillary content and the video to a point in time when the streaming of the video from the remote storage medium is interrupted;
>
> associating the link program with the video;
>
> streaming the video over the network for display;
>
> providing the link program over the network;
>
> receiving an indication of an interaction with the link program;
>
> interrupting, at the first site, the streaming of the video in response to receiving the indication of the interaction with the link program; and
>
> continuing the streaming of the video over the network from the point in time when the streaming of the video was interrupted.

Ex. 1001, 9:45–10:3.

II. ANALYSIS

A. Covered Business Method Patent

In order to be eligible for a covered business method patent review, a patent must "claim[] a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions." AIA § 18(d)(1); *see* 37 C.F.R. § 42.301(a). In the Decision on Institution, we determined that the '246 patent includes at least one claim directed to a covered business method and, thus, is eligible for a covered business method patent review. *See* Inst. Dec. 9–12. Patent Owner did not contest this determination in its Patent Owner Response. Further, we discern no reason based on the complete record developed during trial to alter this determination.

B. Claim Construction

In a covered business method patent review, a "claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears." 37 C.F.R. § 42.300(b); *see In re Cuozzo Speed Techs., LLC*, 778 F.3d 1271, 1278–82 (Fed. Cir. 2015). Under this standard, we construe claim terms using "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

We presume that claim terms have their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir.

2007). This presumption, however, may be rebutted when the patentee acts as his own lexicographer, giving the term a particular meaning in the specification with "reasonable clarity, deliberateness, and precision." *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

We construed the following claim terms as part of our Decision on Institution. Inst. Dec. 6–9.

Claim Term	Construction in Decision on Institution
link program	a set of instructions that tells the computer what to do when a link is selected
providing	to make available; to supply
ancillary content	any content or page of content linked to the primary content or content linked therefrom

Based on the complete record before us as developed during trial, we see no reason to change the interpretations of "providing" or "ancillary content," set forth above. Based on the dispute, however, as to whether the correct interpretation of "link program" has been applied in this proceeding, we analyze that claim limitation below. We also construe "providing the link program over the network" and "associating the link program with the video."

1. "link program"

Independent claim 1 recites "creating a link program adapted to both: (a) interrupt streaming of the video . . . and (b) access ancillary content." Ex. 1001, 9:49–54. The Specification of the '246 patent does not explicitly define "link program." The Specification, however, describes how the "link program" operates when a link is selected, namely "to interrupt the delivery of video to a visual display and provide access to ancillary content

accessible over a network." Ex. 1001, 2:44–48; *see id.* at 5:19–6:32; 6:59–7:26. These functions, however, are explicitly recited in claim 1 and, thus, need not be included in our construction of "link program." *Id.* at 9:49–59. We rely on a *Merriam-Webster's Online Dictionary* definition of "program" as "a set of instructions that tell a computer what to do,"[4] and the clear language of the claims (e.g., the term "link" is merely an adjective modifying the term "program"), to conclude the broadest reasonable interpretation is "a set of instructions that tells the computer what to do when a link is selected."

Patent Owner disagrees with our construction, and contends that this claim language requires a "*single* 'link program' that is adapted to perform two functions: (a) interrupt streaming of the video and (b) access ancillary content." PO Resp. 9 (emphasis added); *see also id.* at 11 (arguing that "[w]hile it may be true that computers do not perform tasks without a program providing instructions, it does not mean that all of the tasks performed by the computer . . . are accomplished by the *same program*") (emphasis added).

We disagree with Patent Owner that the plain language of the claims, in view of the Specification of the '246 patent, requires the link program be limited to a *single* program. The claim language itself does not indicate a *single* program is required. Further, we see no language in the Specification, and Patent Owner has not pointed us to any such language, that indicates clearly or persuades us that the claims should be limited as such. The only

---

[4] MERRIAM-WEBSTER'S ONLINE DICTIONARY, http://www.merriam-webster.com/dictionary/program (last visited May 20, 2014).

portion of the Specification to which Patent Owner specifically points merely "mimics the claim language." Tr. 25:1–6 (citing Ex. 1001, 2:45–48).

Further still, our construction is supported by arguments made by Patent Owner during prosecution of the application that matured into the '246 patent.[5] "[T]he prosecution history, while not literally within the patent document, serves as intrinsic evidence for purposes of claim construction. This remains true in construing patent claims before the PTO." *Tempo Lighting, Inc. v. Tivoli, LLC*, 742 F.3d 973, 977–78 (Fed. Cir. 2014) (citing *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997)); *see also Laitram Corp. v. Morehouse Indus., Inc.*, 143 F.3d 1456, 1462 (Fed. Cir. 1998) ("[A]rguments made during prosecution shed light on what the applicant meant by its various terms . . . .").

As noted by Petitioner in its Reply, during prosecution, in response to a rejection of claim 1 (among others) under 35 U.S.C. § 112, first paragraph, "Patent Owner argued 'link program' include[s] any collection of computer instructions." Pet. Reply 3 (citing Ex. 1002, 59[6] (brackets added)). In arguing the claims had written description support in the Specification, "Patent Owner summarized the meaning of link program as follows: 'the fact that [a] computer performs the disclosed *functions* when a user interacts with an interface link *necessarily requires* that there is a link program . . . .'"

---

[5] U.S. Appl. No. 13/495,884 ("the '884 application"). Patent Owner was the assignee of the '884 application during prosecution of the application. *See* Ex. 1002, 292 (Terminal Disclaimer); *id.* at 6 (Issue Fee Transmittal).

[6] Exhibit 1002 includes the entire prosecution history of the '884 application. Unless otherwise noted, citations to Exhibit 1002 herein are to the Response to Final Office Action, dated March 22, 2013, and the included Declaration under 37 C.F.R. § 1.132 of Dr. Gareth Loy.

Id. at 3–4 (citing Ex. 1002, 60, 83 (emphasis and brackets added by Petitioner)). Patent Owner further argued that

> The plain meaning of the term "program" is an organized list of instructions that, when executed, causes a computer to behave in a predetermined manner. . . . [A]nytime a computer does anything meaningful, it is pursuant to an instruction commanding it to perform the meaningful function. The compilation of those instructions constitutes a program.

Ex. 1002, 59, 82–83. These arguments made by Patent Owner during prosecution of the '884 application further support our conclusion that there was no intention to limit the claimed "link program" to a *single* program. Instead, as argued by Patent Owner during prosecution of the '884 application, the claims merely require the computer to function in a particular manner when a link is selected (due to the presence of the "link program").

As discussed, Patent Owner does not point us to persuasive evidence that the term "link program" should be limited to a *single* program, as argued. Accordingly, we maintain our previous construction for the term "link program"—"a set of instructions that tells the computer what to do when a link is selected."

2. *"providing the link program over the network" / "associating the link program with the video"*

In response to Patent Owner's arguments regarding the application of Chen to the claims, Petitioner argues that the claim limitations "providing the link program over the network" and "associating the link program with the video" do not require that the *entire* link program be provided over the network, or that the *entire* link program be associated with the video. Pet. Reply 9–11 (citing *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*,

469 F.3d 1005, 1014–15 (Fed. Cir. 2006) (construing the claim term "screw head is 'pressed against' the 'hollow spherically-shaped portion'" to include the case where "[the screw head] presses against all *or any part of* that portion," because "the claim language does not indicate . . . how much of the hollow spherically-shaped portion must be 'pressed against' the screw head") (emphasis added)). The claim language itself does not indicate that the *entire* link program be provided over the network, or that the *entire* link program be associated with the video. Further, we see no language in the Specification that indicates clearly or persuades us that the claims should be limited as such.

This construction is supported also by arguments made by Patent Owner during prosecution of the '884 application. *See* Ex. 1002, 164–65 (Response to Office Action, dated August 22, 2012) (citing Ex. 1001, 6:2–4, 9–11) (relying on disclosure of providing and associating *interface links* as specification support for the "providing the *link program* over the network" and "associating the *link program* with the video" limitations, respectively, in response to a rejection under 35 U.S.C. § 112, first paragraph); *see also* Ex. 1002, 60, 82 ("[I]t would be clear to a person of ordinary skill in the art that *interface links* <u>*are elements of*</u> *the interface link program*.") (emphases added).

Based on the foregoing, we agree with Petitioner, and determine that the claim limitations "providing the link program over the network" and "associating the link program with the video" do not require that the *entire* link program be provided over the network, or that the *entire* link program be associated with the video.

C. Anticipation by Chen

Petitioner contends that claims 1–3, 5, 8, 10, 11, 13, and 14 of the ’246 patent are unpatentable under 35 U.S.C. § 102(b) as anticipated by Chen. Pet. 15–23. In support of the asserted grounds of unpatentability, Petitioner sets forth teachings of Chen, and provides detailed claim charts explaining how each claim limitation is disclosed in the cited reference.

1. Chen

Chen discloses a method for indicating a location of time dependent hot-link regions in a video. Ex. 1003, Abstract. The video can be streamed from a URL and displayed on a computer monitor. *Id.* at 3:30–41, 4:29–34. The streaming video is encoded with embedded hot-links, which point to various URLs connected to a computer network. *Id.* at 4:4–10. When a user clicks on a hot-link, the video is paused and the selected hot-link data is displayed on the computer monitor. *Id.* at 4:20–35. The user may resume the video by clicking on the play button. *Id.* at 4:38–40.

2. Petitioner’s Arguments and Evidence

After considering the entire record, we are persuaded by Petitioner’s analysis of how each of the elements of claims 1–3, 5, 8, 10, 11, 13, and 14 of the ’246 patent, arranged as in the claims, is disclosed in Chen. Pet. 15–23.

For example, with respect to independent claim 1, we are persuaded that Chen discloses converting video to “hot” video, containing “hot-links,” corresponding to the claimed “method for creating an interactive video.” Pet. 16 (citing Ex. 1003, 6:16–21; Ex. 1008 ¶ 17).

We are persuaded further that Chen’s disclosure of an MPEG encoded video, streamed from a URL for display on a computer connected to a

network, corresponds to the claimed steps of "encoding and storing the video onto a remote storage medium at a first site" and "streaming the video over the network for display." Pet. 16, 18 (citing Ex. 1003, 3:36–41, 4:5–19, 4:28–34, 5:55–6:1; Ex. 1008 ¶ 17). Petitioner provides testimony that "[o]ne of ordinary skill in the art would understand that streaming video to one site would inherently disclose that the video is stored in a storage medium at a remote site and is streamed to the viewing device." Ex. 1008 ¶ 17. Patent Owner has not pointed us to any evidence contesting this testimony.

We are persuaded also that Chen's disclosure of pausing the video and displaying the linked page on the computer, in response to clicking a hot-link, discloses the claimed "creating a link program adapted to both: (a) interrupt streaming of the video at the remote storage medium . . . and (b) access ancillary content . . . ." Pet. 16–17 (citing Ex. 1003, 4:5–10, 4:21–25, 4:28–40, 7:30–33; Ex. 1008 ¶ 16); *see also* Ex. 1003, 2:11–17 ("The [HyperVideo Authoring] tool allows one to prepare video clips with the hot-link information and then to link them with other types of media."); *id.* at 5:55–6:26 (discussing "[c]reation of hot video content"). As discussed above, Patent Owner admitted, during prosecution of the '884 application, "the fact that [a] computer performs the disclosed *functions* when a user interacts with an interface link *necessarily requires* that there is a link program." Ex. 1002, 60, 83 (emphases added).

We are persuaded additionally that Chen's disclosure of encoding the embedded hyperlinks in the video (e.g., inserting the hot-link information into frames in the video), and identifying incoming data as a "hot" video such that a hot video decoder may display the "hot" video, including the video, audio, and hot-link information, corresponds to the claimed steps of

"associating the link program with the video" and "providing the link program over the network." Pet. 17–19 (citing Ex. 1003, 4:4–10, 5:56–6:39, 6:48–7:2; Ex. 1008 ¶ 18).

We are persuaded further that Chen's disclosure of transmitting a signal to the URL, from which the video is being streamed, to request delivery of a linked html file (containing instructions to display text or multimedia content), *in response to a user clicking on a hot-link*, corresponds to the claimed step of "receiving an indication of an interaction with the link program." Pet. 19 (citing Ex. 1003, 4:20–25; Ex. 1008 ¶ 19). We are persuaded also that Chen's disclosure of having the URL, from which the video is being streamed, pause the video, in response to a user clicking on a hot-link, while the text or multimedia content is being displayed, corresponds to the claimed step of "interrupting, at the first site, the streaming of the video in response to receiving the indication of the interaction with the link program." Pet. 19 (citing Ex. 1003, 4:28–34; Ex. 1008 ¶ 16). We are persuaded additionally that Chen's disclosure of allowing the user to resume the video corresponds to the claimed step of "continuing the streaming of the video over the network from the point in time when the streaming of the video was interrupted." Pet. 19 (citing Ex. 1003, 4:38–40; Ex. 1008 ¶ 20).

We are persuaded similarly by Petitioner's contentions and supporting evidence concerning claims 2–3, 5, 8, 10, 11, 13, and 14. Pet. 19–23.

3. Patent Owner's Arguments and Evidence

Patent Owner argues that Chen does not disclose several features of claim 1, as well as of dependent claims 8 and 11. PO Resp. 8–33. Patent Owner also presents arguments regarding the reliability of Dr. Bove's

testimony. PO Resp. 12–23. We address each of Patent Owner's arguments in turn.

"link program adapted to both: (a) interrupt streaming of the video . . . and (b) access ancillary content"

Patent Owner contends that Chen does not disclose a "link program adapted to both: (a) interrupt streaming of the video . . . and (b) access ancillary content" as recited in claim 1. PO Resp. 8–27. The majority of Patent Owner's arguments in this regard are premised on its proposed construction that a *single* link program that performs *both functions* is required. For the reasons discussed above, we are not persuaded that the claims are limited in this manner. *See supra*, Section II.B.1.

Patent Owner further argues that Chen does not disclose the claimed "link program," because Chen "is ambiguous regarding how pausing is accomplished," indicating that it is unclear "what program (e.g., list of instructions that the computer performs) does the pausing of the video" and "given the limited and ambiguous disclosure of Chen [ ] with regard to pausing, the pausing discussed could be accomplished by the 'instructions which the computer executes' contained in the linked html file, i.e., the ancillary content." PO Resp. 24–26. Petitioner argues in its Reply that "[t]he 'link program' need not 'control the pausing' as Patent Owner contends," and that "[t]he claim language establishes that the 'link program' need not 'control' the stream interruption." Pet. Reply 4–5. We are persuaded by Petitioner's assertion and analysis that "[n]othing in the claim requires that the link program created in the 'creating' step performs the [later recited] 'interrupting' step." *Id.* at 5; *see id.* at 4–7.

Accordingly, Patent Owner's arguments regarding Chen's lack of a "link program" are not persuasive.

"providing the link program over the network" / "associating the link program with the video"

Patent Owner contends that Chen does not disclose the claimed steps of "providing the link program over the network" or "associating the link program with the video." PO Resp. 27–31. For each of these claim terms, Patent Owner's arguments are premised on the presumption that Chen's video encoder, which Patent Owner argues is not *necessarily* provided over the network or associated with the video, controls the pausing of the video, and, thus, must be part of the claimed "link program." *See id.* As noted in Petitioner's Reply, this argument ignores Petitioner's position that Chen's hot-link stream in the video, by itself, may constitute the claimed "link program." Pet. Reply 7–9. Petitioner also argues that these claim limitations do not require that the *entire* link program be provided over the network, or that the *entire* link program be associated with the video. Pet. Reply 9–11.

Based on our construction of these claim limitations (s*ee supra*, Section II.B.2.), and for purposes of this Decision, we need not determine whether the hot-link stream in the video of Chen, by itself, or the hot-link stream *and* the video encoder, constitutes the claimed link program. As Patent Owner's above arguments are directed to the decoder, Patent Owner does not contest that Chen's hot-link stream is both associated with the video and provided over the network. *See, e.g.*, Tr. 27:13–15 ("[I]f the position is that the claim can include multiple programs, then Chen fails to anticipate because the *decoder* is neither associated with the video nor

provided over the network.") (emphasis added); *id.* at 28:21–24. The hot-link stream is sufficient, under our construction, to meet the claim limitations that the link program is provided over the network and is associated with the video.

We, thus, find the disclosure of Chen to be sufficient under either application of Chen to correspond properly to the claimed "link program" being both provided over the network, and associated with the video. Accordingly, Patent Owner's arguments that Chen does not disclose the claimed steps of "providing the link program over the network" or "associating the link program with the video" are not persuasive.

Dependent Claims 8 and 11

Patent Owner provides additional arguments with respect to dependent claims 8 and 11. PO Resp. 31–32. Claim 8 recites that "the link program is provided simultaneously with the streaming of the video over the internet." Ex. 1001, 10:21–23. Claim 11 recites that "the associating of the link program includes encoding the link program with the video onto the storage medium." *Id.* at 10:29–31. Patent Owner's arguments in this regard are similar to the arguments discussed above, that Chen's video encoder is not necessarily provided over the network or associated with the video, and, thus, cannot disclose the recited features. *See* PO Resp. 31–32. For the same reasons discussed above with respect to claim 1, Patent Owner's arguments are not persuasive.

Dependent Claims 2–3, 5, 10, 13, and 14

Patent Owner does not argue specifically the patentability of claims 2–3, 5, 10, 13, and 14 based on any limitations other than those discussed above with respect to independent claim 1. *See* PO Resp. 33. As indicated

above, after reviewing the entire record, we are persuaded by Petitioner's arguments and evidence in connection with the limitations introduced in each of these dependent claims.

Reliability of Dr. Bove's Testimony

Patent Owner argues that Dr. Bove's testimony regarding how Chen discloses a "link program" should be disregarded, particularly because Dr. Bove's testimony allegedly is inconsistent with previous testimony in an *Inter Partes* Reexamination of Patent Owner's U.S. Patent No. 7,870,592 ("the '592 reexamination"), and that his "inconsistent testimony is likely caused by pecuniary interests." PO Resp. 12–24.

We note, as a general matter, that although the claims in the '592 reexamination may be similar, they are not identical to the claims of the '246 patent. Further, Patent Owner has not filed a Motion to Exclude Dr. Bove's testimony. In any case, the Board, sitting as a non-jury tribunal with administrative expertise, is well-positioned to determine and assign appropriate weight to evidence presented. *See Gnosis S.p.A. v. S. Alabama Med. Sci. Found.*, Case IPR2013-00118, slip op. at 43 (PTAB June 20, 2014) (Paper 64); *see also Donnelly Garment Co. v. NLRB*, 123 F.2d 215, 224 (8th Cir. 1941) ("One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received."). In rendering our decision, we have assigned weight to the evidence as appropriate in view of the entire record before us.

4. Conclusion

For the reasons discussed, Petitioner has demonstrated, by a preponderance of the evidence, that claims 1–3, 5, 8, 10, 11, 13, and 14 of the '246 patent are unpatentable as anticipated by Chen.

D. Obviousness in View of Chen and Hartanto

Petitioner contends that claim 15 of the ’246 patent is unpatentable under 35 U.S.C. § 103 as obvious based on Chen and Hartanto. Pet. 28–30. Claim 15 recites that the network includes a wireless network. Ex. 1001, 10:43–44. Petitioner contends that use of wireless networks as a mechanism for the transmission of videos was well known in the art prior to the filing date of the ’246 patent, and provides declaration evidence that one of skill in the art would have understood the network for data transfer could be a wireless network. Pet. 28–29; Ex. 1008 ¶ 24. Petitioner cites Hartanto as an example of disclosure of wireless networks used with video transmission. *Id.* Petitioner further contends that the combination of using a wireless network connection as the network in Chen would have yielded a predictable result. Pet. 29–30; Ex. 1008 ¶ 24. We determine that Petitioner’s analysis and evidence is persuasive.

Patent Owner does not argue specifically the patentability of claim 15 based on any limitations other than those discussed above with respect to independent claim 1. *See* PO Resp. 33. After reviewing the entire record, we are persuaded that Petitioner has demonstrated by a preponderance of the evidence that claim 15 of the ’246 patent would have been obvious to a person of ordinary skill in the art[7] over Chen and Hartanto.

---

[7] According to Petitioner, a person of ordinary skill in the art would have a “Bachelor of Science (B.S.) degree in computer science, or a similar amount of computer science coursework” and “at least two years of experience in working with interactive media, including storing and streaming media on a network.” Pet. 12–13 (citing Ex. 1008 ¶ 4).

E. Motion to Exclude

Petitioner's Motion to Exclude seeks to exclude Exhibit 2007.[8] Mot. to Excl. 1. Patent Owner relies on ¶ 15 of Exhibit 2007 as evidence that "'the embedded hot links' of the Chen reference 'do not perform the pause operation.'" *Id.* at 2; PO Resp. 15. As discussed above, we have determined that the claims do not require the claimed link program to perform the claimed interrupting step. *See supra* Section II.C.3. We, thus, have no need to consider or rely on the cited portions of Exhibit 2007 in rendering our decision. Accordingly, Petitioner's Motion to Exclude is *dismissed as moot*.

III. CONCLUSION

Based on the evidence and arguments, Petitioner has demonstrated, by a preponderance of the evidence, that claims 1–3, 5, 8, 10, 11, and 13–15 of the '246 patent are unpatentable.

IV. ORDER

Accordingly, it is

ORDERED that claims 1–3, 5, 8, 10, 11, and 13–15 of U.S. Patent No. 8,479,246 are unpatentable; and

FURTHER ORDERED that Petitioner's Motion to Exclude is *dismissed*.

This is a final written decision. Parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

---

[8] Exhibit 2007 is a Declaration of Dr. Gareth Loy Under 37 C.F.R. § 1.132, submitted in the '592 reexamination.

PETITIONER:

Eliot Williams
Harper Batts
BAKER BOTTS LLP
eliot.williams@bakerbotts.com
harper.batts@bakerbotts.com

PATENT OWNER:

Amedeo F. Ferraro
Thomas H. Martin
Wesley C. Meinerding
Brent D. Martin
MARTIN & FERRARO, LLP
aferraro@martinferraro.com
tmartin@martinferraro.com
wmeinerding@martinferraro.com
bmartin@martinferraro.com
docketing@martinferraro.com