UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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AMAZON.COM, INC. and AMAZON WEB SERVICES, LLC,
Petitioner,

v.

PERSONALIZED MEDIA COMMUNICATIONS, LLC,
Patent Owner.

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Case IPR2014-01534
Patent 7,827,587 B1

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Before KARL D. EASTHOM, TRENTON A. WARD, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318 and 37 C.F.R. § 42.73

I.   INTRODUCTION

We have jurisdiction to hear this *inter partes* review under 35 U.S.C.
§ 6(c), and this Final Written Decision is issued pursuant to 35 U.S.C.
§ 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine
that Petitioner has shown by a preponderance of the evidence that claim 9 of
U.S. Patent No. 7,827,587 B1 (Ex. 1002, "the '587 patent") is unpatentable.
We also determine that Patent Owner has not met its burden on its Motion to
Amend regarding entry of proposed substitute claim 22, and thus, we deny
the Motion to Amend.

A. Procedural History

Amazon.Com, Inc. and Amazon Web Services, LLC ("Petitioner")
filed a Petition (Paper 1, "Pet.") to institute an *inter partes* review of claim 9
of the '587 patent. Personalized Media Communications, LLC ("Patent
Owner") filed a Preliminary Response (Paper 6, "Prelim. Resp."). Pursuant
to 35 U.S.C. § 314(a), we instituted an *inter partes* review of claim 9 as
(1) unpatentable under 35 U.S.C. § 103 in view of Monat,[1] and (2)
unpatentable under 35 U.S.C. § 103 in view of Calo[2]. *See* Paper 7 ("Dec. to
Inst."), 41.

After institution of trial, Patent Owner filed a Patent Owner Response
(Paper 20, "PO Resp."), to which Petitioner filed a Reply (Paper 32,
"Reply"). In addition, Patent Owner also filed a Contingent Motion to
Amend the Claim (Paper 21), to which Petitioner filed an Opposition

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[1] US Patent No. 4,556,904; Dec. 3, 1985 (filed Mar. 3, 1983) ("Monat," Ex.
1006).
[2] US Patent No. 4,805,134; Feb. 14, 1989 (filed Jan. 9, 1986) ("Calo," Ex.
1007).

(Paper 33). Patent Owner then filed a Reply to Petitioner's Opposition to the Motion to Amend the Claims. Paper 40 ("PO Reply").

Patent Owner filed observations on the cross-examination of Petitioner's declarant (Paper 46), to which Petitioner filed a response (Paper 49). Petitioner filed observations and amended observations on the cross-examination of Patent Owner's declarant (Papers 48, 53), to which Patent Owner filed a response and an amended response (Papers 50, 53).

An oral argument was held on December 8, 2015. A transcript of the oral argument is included in the record. Paper 54 ("Tr.").

B. Related Proceedings

Petitioner informs us that the '587 patent is the subject of a lawsuit: *Personalized Media Commc'ns, LLC v. Amazon.com, Inc.*, No. 1:13-cv-1608-RGA (D. Del. filed Sept. 23, 2013). Pet. 1. According to Petitioner, the district court's judgment in the lawsuit has been appealed to the Court of Appeals for the Federal Circuit as Appeal No. 15-2008. Paper 35, 1. Petitioner also informs us that six patents related to the '587 patent are the subject of concurrently-filed petitions for *inter partes* review. Pet. 1; Paper 35, 1; *see* IPR2014-01527, IPR2014-01528, IPR2014-01530, IPR2014-01531, IPR2014-01532, and IPR2014-01533.

C. The '587 Patent

The '587 patent discloses a system for using embedded signals to deliver personalized program content to a subscriber station. Ex. 1002, 7:47–48, 15:14–46. One embodiment of the '587 patent describes a remote program originating studio that transmits a commercial ("program unit Q") in a network transmission to a number of intermediate transmission stations,

where each intermediate transmission station generates additional information that is included in a transmission sent to ultimate receiver stations. *Id.* at 193:25–57. This embodiment is illustrated in Figures 6A and 6B, reproduced below.
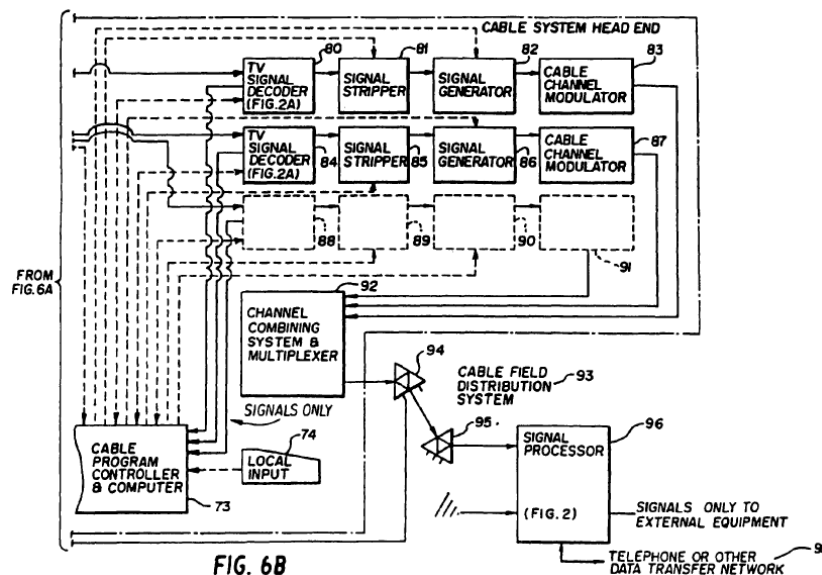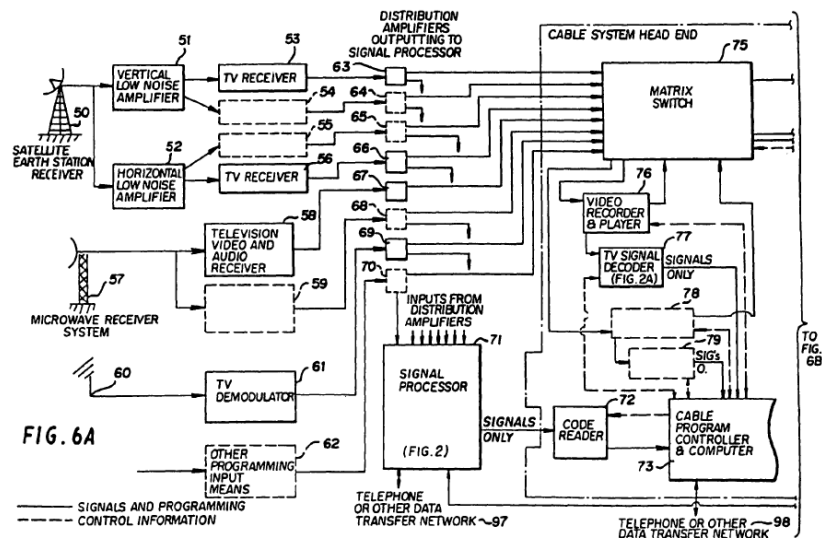

FIG. 6A

FIG. 6B

Figure 6A shows one intermediate transmission station 50 controlled by a program originating studio. *Id.* at 193:47–48. The station receives

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network transmissions at receiver 53 and retransmits the transmission immediately via modulator 83, shown in Figure 6B. *Id.* at 193:48–51.

According to the '587 patent, computer 73 of a given intermediate transmission station contains "information relevant to the particular discounts and specials in effect at the particular markets in the vicinity of said station." *Id.* at 193:58–66, Fig. 6A. Specifically, the information may be "local-formula-and-item information" in the form of specific values for various variables ("a, p, q, d, Z, r, s, and dd") corresponding to information such as the cost of gasoline ("p") and the distance between a given warehouse and market ("Z"). *See id.* at 187:9–54, 193:65–194:30. With each transmission of the commercial information from the transmitter station to a subscriber station, the computer program instructions compute the cost of delivery of a product to a particular subscriber. *Id.* at 186:38–46, 187:1–9.

The '587 patent discloses that after a program originating studio transmits a "generate-set-information message (#10)" to intermediate transmission station computers 73 that includes, among other information, an execution segment, information segment information of an "intermediate generation set of Q," and an end of file signal, then computer 73 executes a program to compile and link "local-formula-and-item information" so that computer 73 generates a specific program instruction set version—the program instruction set of Q1—that applies to the particular discounts and specials in effect at the particular markets in the vicinity of the subscriber station and at the particular time of the network transmission of Q. *Id.* at 195:16–196:7.

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