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AOL Inc./Finnegan 901 New York Ave., NW Washington, DC 20001			CHOUDHURY, AZIZUL Q	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JEFFREY JONATHAN SPURGAT,  
STEPHEN CHRISTOPHER GLADWIN, DEPENG BI, and  
TROY STEVEN DENKINGER

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Appeal 2015-002013  
Application 09/833,173  
Technology Center 2400

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Before JEFFREY S. SMITH, AMBER L. HAGY, and  
AARON W. MOORE, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the rejection of claims 10–26, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

*Illustrative Claim*

10. A system for maintaining protection of digital content distributed for playback, the system comprising:

a computing platform, executing a playback application, configured to:

select a server located on the Internet as a source of digital content;

receive a file of encrypted digital content from the server;

prepare the file of encrypted digital content for transmission in a streaming format; and

transmit the encrypted digital content in the streaming format, without decrypting, to a communication link; and

a peripheral device coupled to the communication link and configured to:

receive the encrypted digital content from the computing platform in the streaming format;

decrypt the encrypted digital content into decrypted digital content as the streaming encrypted digital content is received; and

convert the decrypted digital content in the streaming format to analog content for playback.

*Prior Art*

Jones	US 6,697,944 B1	Feb. 24, 2004
Levy	US 7,055,034 B1	May 30, 2006
Allamanche	US 7,308,099 B1	Dec. 11, 2007

*Examiner's Rejections*

Claims 10–26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Jones, Levy, and Allamanche.

ANALYSIS

This application was before us as Appeal Number 2012-002622, where we affirmed the rejection of claims 10–26 as unpatentable over Jones and Levy. Appellants then amended five of the seven functional limitations of claim 10 to recite the functions are performed on content in a “streaming format.” The Examiner now finds Allamanche teaches that performing the functions taught by Jones and Levy on content in a “streaming format” as claimed was within the level of ordinary skill in the art. Final Act. 4; Ans. 5. In particular, the Examiner finds that Allamanche teaches that the scope of the claimed “streaming format” encompasses the MPEG layer 3 (MP3) format. Ans. 4–5. The Examiner finds Allamanche teaches encrypting and decrypting content in the “streaming format” (Final Act. 4; Ans. 5). The Examiner also finds that Levy teaches preparing a file of encrypted content for transmission in the MP3 “streaming format” (Ans. 4), and Jones teaches receiving, decrypting, and playing back the content in the MP3 “streaming format” (Ans. 5–6).

Appellants contend Levy teaches downloading an MP3 file, but does not teach the functions of receive, prepare, and transmit encrypted digital

content in a “streaming format” as recited in claim 10. Reply Br. 4–5. Appellants’ contention is based on the premise that the MP3 format of Levy is not a “streaming format” as claimed. “Absent an express definition in their specification, the fact that appellants can point to definitions or usages that conform to their interpretation does not make the PTO’s definition unreasonable when the PTO can point to other sources that support its interpretation.” *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997). Appellants’ Specification does not provide an express definition of “streaming format” that excludes the MP3 format. Although Appellants contend the Examiner improperly relies on Wikipedia to find MP3 is a format for streaming (Reply Br. 5), Appellants do not provide persuasive evidence or argument to rebut the Examiner’s finding that Allamanche teaches that the scope of the claimed “streaming format” encompasses the MP3 format. We agree with the Examiner that the scope of “streaming format” encompasses formats, such as MP3, that can be streamed.

Appellants present similar arguments with respect to Jones (Reply Br. 4), which we find unpersuasive. Also, Appellants’ contentions that processing encrypted digital content in a “streaming format” was unknown in the prior art is inconsistent with Figure 1 of Appellants’ Admitted Prior Art, which shows streamed encrypted content transmitted from computer 121 to computer 100.

We sustain the rejection of claim 10 under 35 U.S.C. § 103. Appellants do not present arguments for separate patentability of claims 11–26, which fall with claim 10.

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DECISION

Claims 10–26 are unpatentable.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED