

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT NO.: 6,614,729

ISSUED: September 2, 2003

FOR: SYSTEM AND METHOD OF CREATING DIGITAL
RECORDINGS OF LIVE PERFORMANCES

ATTACHMENT TO FORM SB-58/PTO-1465 REQUEST FOR INTER PARTES
REEXAM TRANSMITTAL FORM

SIR or MADAM:

The Electronic Frontier Foundation (EFF), a not-for-profit public service organization that works to protect free expression in all forms of electronic media, respectfully requests *inter partes* reexamination ("Request") under 35 U.S.C. §§ 311-318 and 37 C.F.R. § 1.913, of claims 1-5 of United States Patent No. 6,614,729 to Griner et al. ("729 Patent")¹ and assigned to Instant Live, L.L.C. ("Instant Live"), a subsidiary of Clear Channel Communications, Inc. ("Clear Channel").² The '729 Patent claims priority back to a provisional application filed on September 26, 2000, and presently the '729 Patent is still enforceable. As discussed below, the '729 Patent is causing significant public harm by restraining innovation and free expression and, importantly, is invalid as anticipated and/or rendered obvious under 35 U.S.C. §§ 102 et seq. and 103(a) by various printed prior-art publications.

I. THE '729 PATENT IS CAUSING SIGNIFICANT PUBLIC HARM AND IS
RESTRAINING INNOVATION AND FREE EXPRESSION

The '729 Patent claims methods for capturing, mixing, and recording live performances and events. More specifically, the '729 Patent claims target the ability of independent musicians to record their own concerts for distribution to fans shortly after their shows. As a fundamental expression of these artists' First Amendment rights, these activities should not be unduly constrained, especially by an overbroad and invalid patent. Already, it has been reported that Clear Channel, the parent company of Assignee

¹ Appendix A contains a copy of the '729 Patent.

² This request for reexamination was prepared with the assistance of Ashley Bollinger and Lori President, law students under the supervision of Joshua Sarnoff, Assistant Director of the Glushko-Samuelsan Intellectual Property Clinic at American University's Washington College of Law.

Instant Live, is using this patent to leverage concert contracts with performing artists and control their ability to communicate with their audiences. Thus, the '729 patent is causing substantial public harm to the rights of artists and music fans. Although this issue is not itself grounds to grant this request for reexamination, EFF respectfully requests that it be considered when determining whether the validity of the '729 patent merits review by your office.

II. THE SUBSTANTIAL NEW QUESTION OF PATENTABILITY

The substantial new question of patentability³ raised by this Request is whether claims 1-5 of the '729 Patent are anticipated and/or rendered obvious by various printed publications published by Telex Communication, Inc. ("Telex") from 1998-1999. These publications were not provided to the USPTO during the examination of the '729 Patent. The '729 Patent claims priority back to September 26, 2000. However, since at least 1997⁴ Telex has disclosed, via the publications, a system that performs each and every step disclosed in claims 1-5 of the '729 Patent. More specifically, Telex's publications disclose an EDAT system that captures one or more analog audio signals, converts these signals into one or more digital files on a computer, edits these files, and then simultaneously records the files onto one or more recording media. As a June 2, 1998 Telex Press Release stated: "Many times the sermons are recorded on DAT by volunteers with material that needs to be edited. With EDAT, the sermon can be recorded directly onto the hard drive, saving transfer time, and minutes of material can be quickly edited out allowing the duplication of cassettes to proceed. Parishioners, in many cases, receive tapes before they leave to go home." EDAT Release, at ¶ 4, ll. 2-6. Thus, the EDAT system provided the exact same functionality and benefits of the '729 Patent over a year before the '729 Patent priority date.⁵

³ See MPEP 2642 ("It is not necessary that a prima facie case of unpatentability exist as to the claim in order for 'a substantial new question of patentability' to be present as to the claim. Thus, 'a substantial new question of patentability' as to a patent claim could be present even if the examiner would not necessarily reject the claim as either anticipated by, or obvious in view of, the prior art patents or printed publications. The difference between 'a substantial new question of patentability' and a 'prima facie' case of unpatentability is important."). See *generally id.* (Defining a substantial new question of patentability as where: "(A) The prior art patents and/or printed publications raise a substantial question of patentability regarding at least one claim, i.e., the teaching of the prior art patents and printed publications is such that a reasonable examiner would consider the teaching to be *important* in deciding whether or not the claim is patentable; and (B) The same question of patentability as to the claim has not been decided by the Office in a previous examination or pending reexamination of the patent or in a final holding of invalidity by the Federal Courts in a decision on the merits involving the claim.") (emphasis in the original).

⁴ See Appendix B (Telex Press Release titled "Telex Introduces the EDAT Digital Master Editing and Duplication System at NSCA EDAT" dated April 18, 1997.).

⁵ See Appendix C (Telex Press Release titled "Telex Launches CDP 2001 Desktop CD Duplicator at 105th AES Convention" dated September 26, 1998. In this press release, Telex describes the use of its CDP-2001 multiple CD duplicator in conjunction with the EDAT system stating, among other things, that "Direct SCSI™ allows the duplicator to operate stand-alone, *as well as to connect directly to a CPU/EDAT Duplication Workstation™*. All CD-R or DVD-R drives in the CDP 2001 become a target writer of PC, Mac and Workstation. A duplicate can be copied directly from the host system on the fly without burning a master CD or DVD." (*Id.* at ¶ 3, ll. 1-4) (emphasis added). Furthermore, the press release states that use of the EDAT system and CDP-2001 together allows for copying "disc-at-once to disc-at-once and

The EDAT system is made up of three essential components: An EDAT-Zing card to capture analog signals (e.g., microphone signals) and convert these analog signals into digital .wav files, an EDAT card and accompanying software running on a standard PC to access and edit these files, and a media recording device, such as the Telex CDP-2001 multiple CD duplicator, to simultaneously copy these files to recordable media. A list of the relevant Telex printed publications, and their respective publication dates, is provided below:

- A. EDAT-Zing Digital Conversion Cards (Telex Form No. ED 20442-3) ("EDAT Brochure"), July 1999⁶
- B. User Instructions EDAT-Zing Analog to Digital Audio Signal Conversion, EDAT Cassette Mastering and Duplication (Telex Form No. 38109-769 Rev A) ("EDAT Instructions"), October 1999⁷
- C. CDP-2001 Desktop CD Duplicator (Telex Form No. ED 20466) ("CDP Brochure"), 1998⁸
- D. EDAT Instructions: Fast EdDit Sound File Editor (Telex form No. 8109-713 Rev C) ("Fast EdDit Manual"), October 1999⁹
- E. Telex EDAT System of Choice for the Little Warehouse (Telex Press Release) ("EDAT Release"), June 2, 1998¹⁰

Each section below sets forth in detail and via an element-by-element claim chart the manner of applying¹¹ these printed publications, either alone or in combination, to render all claims of the '729 Patent invalid.

multisession to multisession. It also converts multisession to disc-at-once and can turn incremental writing on or off when copying a master to multisession. *The system can have simultaneous disc-to-disc copying while downloading the master to the hard drive, which is ideal for network operation.*" (*Id.* at ¶ 4, ll. 1-4.) (emphasis added). Finally, this press release describes how *"Up to 910 copies an hour can be produced when using a 60-minute master."* (*Id.* at ¶ 6, l. 3.) (emphasis added).).

⁶ See Appendix D.

⁷ See Appendix E.

⁸ See Appendix F.

⁹ See Appendix G.

¹⁰ See Appendix H.

¹¹ See MPEP 2617 ("the request for inter partes reexamination must. . . include [a] statement pointing out each substantial new question of patentability based on the cited patents and printed publications, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.").

A. The EDAT Brochure Alone Anticipates and/or Renders Obvious Claims 1-5 of the '729 Patent

In July of 1999,¹² Telex publicly published an EDAT Brochure that invalidates all claims of the '729 Patent. Having been published more than one year before the '729 Patent's priority date, the EDAT Brochure is prior art to the '729 Patent under 35 U.S.C. § 102(b).¹³ The EDAT Brochure fully discloses a system that captures one or more analog signals, converts these signals using a personal computer ("PC") into a digital .wav file that is accessible as it is stored, edits the file, and then simultaneously outputs this edited file to a plurality of media recording devices.¹⁴ More to the point, the system uses Telex EDAT-Zing and EDAT cards that are inserted into the PCI slots of a PC meeting certain performance criteria, with the EDAT-Zing card linked to an analog input device, and the EDAT card linked to a digital recording device. The EDAT Brochure also discloses, *inter alia*, a graphic illustrating a network diagram with an Analog Input device such as a "Mic." connected to an EDAT-Zing editing card for "analog to digital input", and an EDAT card connected to a "Digital Output" such as a multiple CD duplicator.¹⁵

Furthermore, the EDAT Brochure renders obvious claim 2 of the '729 Patent. Claim 2 depends from claim 1 and attempts to add as its only additional element a second editing station to the editing module. Not only would the mere duplication of the editing module's functionality have been obvious to one of skill in the art under 103(a), but it is also obvious as a mere duplication of parts.¹⁶ Under MPEP 2144.04, "the mere duplication of parts has no patentable significance unless a new and unexpected result is produced".¹⁷ Here claim 2 of the '729 Patent merely attempts to duplicate the editing module, and associated functionality, disclosed in the EDAT Brochure by adding "two or more editing stations". Such a duplication renders claim 2 of the '729 Patent obvious. Moreover, the technique of using more than one PC computer on a network to edit separate files simultaneously was well-known in the art before September 26, 2000 and would have been obvious to one of ordinary skill in the art at the time.

Additionally, the EDAT Brochure also renders claim 3 of the '729 Patent obvious under § 103(a) and as a mere duplication of parts.¹⁸ Claim 3 depends from claim 2 and attempts to add as its only additional element a soundboard with a mixer. Thus, claim 3 attempts to take something that is old in the art (*i.e.*, a sound mixer), with functionality that is old in the art, and use it to duplicate the editing functionality of the EDAT card, a card that, among other things, has functionality identical to that of a sound mixer. As disclosed within the EDAT Brochure, "EDAT editing can combine with other .wav files,

¹² See EDAT Brochure at 3 (lower right corner).

¹³ Even if the EDAT Brochure is not § 102(b) art, it would qualify alternatively as § 102(a) art.

¹⁴ See Appendix D.

¹⁵ See EDAT Brochure at 3.

¹⁶ See MPEP 2144.04 ("Duplication of Parts").

¹⁷ See *id.* (citing *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).).

¹⁸ See MPEP 2144.04 ("Duplication of Parts").

mix in other tracks, rearrange the order of the music, cuts, etc.",¹⁹ hence demonstrating functionality similar to a sound mixer. Accordingly, the EDAT brochure contains the additional element disclosed in claim 3 and renders it obvious with the same force as claim 2. Moreover, claim 3 is also mere duplication of parts and as such is rendered obvious under § 103(a).

The EDAT Brochure also anticipates claim 4 of the '729 Patent under § 102(b) via the doctrine of Inherent Anticipation.²⁰ Claim 4 depends from claim 1 and attempts to claim as its only additional element a magnetic digital or analog secondary backup device to create backup recordings,²¹ used in conjunction with a primary RAM array file storage device.²² The limitation of a primary storage device in the form of a RAM array is inherent in the PC disclosed in the EDAT Brochure.²³ That is, while disclosed, but not discussed in the EDAT Brochure, it is inherent in that a PC would use RAM as a primary file storage device when capturing and/or editing an event signal. The PC disclosed in the EDAT Brochure also contains a hard drive as a secondary backup device.²⁴ Thus, the backup module disclosed in claim 4 is anticipated within the meaning of 102(b) by the PC disclosed in the EDAT Brochure containing a hard drive and RAM.

Finally, the EDAT Brochure anticipates claim 5 of the '729 Patent. Claim 5 depends from claim 4 and adds the additional element of interposing a soundboard between the signal source and the primary storage module. The EDAT Brochure discloses the EDAT Zing as capable of performing soundboard functionality as it digitizes signal sources and saves them into the primary storage module.²⁵ Moreover, claim 5 is also obvious under § 103(a) as based upon a rearrangement of parts.²⁶ This soundboard would perform much of the same functionality as the editing functionality associated with the EDAT card, including the mixing of tracks and the like. Someone of skill in the art would have the suggestion or motivation to interpose the soundboard between the signal source and the primary storage module and use it for editing purposes. Thus, claim 5 is rendered obvious by the EDAT Brochure within the meaning of § 103(a).

The following chart demonstrates element-by-element how the EDAT Brochure anticipates and/or renders obvious claims 1-5 of the '729 Patent:

¹⁹ See EDAT Brochure at 3. See also *id.* at 2, ¶ 2 ("You can set the file name, gain level, channel format (mono or stereo)...").

²⁰ See MPEP 2112 ("Requirements of Rejection Based on Inherency").

²¹ See '729 Patent, Col. 6, ll. 7-11.

²² See *id.* Col. 5, ll. 46-49.

²³ See EDAT Brochure at 4 (disclosing an EDAT-Zing card used in conjunction with 32 megabytes (MB) of Random Access Memory (RAM) in a PC).

²⁴ See *id.* at 2 ¶ 4, ll. 2-3 ("Using the hard drive, one can download information from the PC's hard drive and create a digital master.").

²⁵ See EDAT Brochure at 2, ¶ 2 ("You can set the file name, gain level, channel format (mono or stereo)...").

²⁶ See MPEP 2144.04 ("Rearrangement of Parts").

	'729 Patent	Telex EDAT System
Claim 1 102(b)	<p>1. An event recording system, comprising:</p> <p>(i) an event-capture module to capture an event signal and transform it into a primary event file that is accessible as it is being formed</p>	<p>As outlined above, the EDAT Brochure anticipates claim 1. Using a network diagram and its accompanying text, the EDAT Brochure discloses an event-capture module that captures an event signal and transforms it into an accessible primary event file. Specifically, the EDAT brochure discloses a network diagram wherein the "Analog Input" such as a "Mic."²⁷ is connected to the EDAT-Zing card and analog signals from this Analog Input device are "loaded directly onto" a PC via the EDAT-Zing card.²⁸ See EDAT Brochure at 3.</p> <p>Furthermore, the EDAT Brochure discloses the ability of the EDAT-Zing card to "digitize multiple audio channels (.wav files) from analog sources." <i>Id.</i> at 2, ¶ 1, ll. 4-5.²⁹ See also <i>id.</i> at 2, ¶ 1, ll. 7-9 ("EDAT Zing makes multiple channel/multiple speed analog to digital conversion possible within the PC environment.")</p> <p>Finally, the EDAT Brochure discloses the ability of the EDAT-Zing card to access the files as they are being formed to "set the file name, gain level, channel format (mono or stereo), as well the option to</p>

²⁷ Compare '729 Patent, Col. 8, ll. 49-58 ("For example, performance audio signal detector 115A could comprise one or more microphones positioned to capture an audio performance and a signal processor capable of converting the microphone output from analog to digital. Audience audio signal detector 115B could comprise one or more microphones positioned to capture audience sounds (audience microphones are often used on performance recordings to make the recording sound 'live') and a signal processor capable of converting the microphone output from analog to digital.") (emphasis added). See also *id.* Fig. 1 #110 (depicting a microphone).

²⁸ Compare '729 Patent, Col. 5, ll. 42-44 ("Signal processor 131 receives and performs any necessary processing on the event output signal to make it operably available to computer 132. For example, it may convert the event output signal from an analog to a digital signal. Signal processor 131 may comprise, for example, any computer sound card capable of high quality A/D conversion.") (emphasis added). See also *id.* Fig. 4 #504 (depicting a step wherein "Mixed analog signal is converted to digital form").

²⁹ Compare '729 Patent, Col. 5, ll. 44-46 ("Computer 132 stores the digital event output signal into the primary file storage device 133 as the primary event file.") (emphasis added).

		reverse the audio after it loads onto the hard drive." <i>Id.</i> at 2, ¶ 2, ll. 10-12.
	(ii) an editing module communicatively connected to the event capture module, wherein the editing module	The EDAT Brochure also discloses an editing module connected to the event capture module. Specifically, it discloses a network diagram wherein the EDAT card, and accompanying software, can take a digitized analog signal in the form of a .wav file, generated by the EDAT-Zing card, and combine it with "other .wav files", "mix in other tracks" or use these cards and accompanying software to "rearrange the order of music cuts, etc." ³⁰ <i>See id.</i> at 3. <i>See also</i> EDAT Brochure at 2, ¶ 3, ll. 1-2 ("The EDAT System also offers the tools you need to edit your digital file, if desired.").
	accesses and parses the primary event file into one or more digital track files that can be recorded onto a recording media; and	The EDAT Brochure also discloses the ability to access and parse a primary event file into one or more digital track files. Specifically, it discloses the ability to "make a half-track (mono) or quarter track (stereo) master that is incredibly clean. EDAT then gives you the flexibility to combine that file with other .wav files, mix in other tracks, rearrange the order of music cuts, etc." <i>Id.</i> at 2, ¶ 3, ll. 3-6.
	(iii) a media recording module communicatively linked to the editing module for receiving the one or more digital track files, the media recording module	Finally, the EDAT Brochure discloses a media recording module connected to the editing module that receives digital tracks and has a plurality of media records. Specifically, it discloses a network diagram wherein a "Digital Output"

³⁰ Compare '729 Patent, Col. 6, ll. 53-59 ("The digital audio editor can be any software program with a suitable graphical interface capable of performing appropriate signal processing functions on digital audio files, *combining separate sequential digital audio files into one file* (commonly referred to as stitching), saving the resulting digital track files to a specified location, and--if necessary--video integration and synchronization.") (emphasis added).

	<p>having a plurality of media recorders for simultaneously recording the one or more digital track files onto a plurality of recording media.</p>	<p>device in the form of a multiple CD duplicator is coupled to the EDAT card.³¹ <i>Id.</i> at 3. <i>See also id.</i> at 2, ¶ 4, ll. 6-8 ("At that point, you can copy to cassette, or, if you own a CD-R drive and the appropriate software, can burn CDs through the EDAT system.")</p> <p>Finally, the EDAT Brochure states that "EDAT will accommodate a variety of duplication speeds: 2x, 8x and 16x. The new Telex XGEN cassette duplicator copies at either 8x or 16x speed, and is expandable up to 58 tapes at once." <i>Id.</i> at 2, ¶ 5, ll. 1-4.</p> <p>Thus, the EDAT brochure discloses all elements of claim 1.</p>
<p>Claim 2 103(a)</p>	<p>The system of claim 1, wherein the editing module has two or more editing station <sic> for simultaneously editing different portions of the primary event file in order to generate the one or more digital track files as the event is occurring.</p>	<p>As discussed above, the EDAT Brochure discloses all of the claim limitations of claim 1, and renders claim 2 obvious. Claim 2 depends from claim 1 and attempts to add as its only additional element a second editing station to the editing module. Not only would the mere duplication of the editing module's functionality have been obvious to one of skill in the art under 103(a), but it is also obvious as a mere duplication of parts.</p> <p>Specifically, the EDAT Brochure discloses a network diagram wherein the EDAT card, and accompanying software, can take a digitized analog signal in the form of a .wav file, generated by the</p>

³¹ Compare '729 Patent, Col. 5-6, ll. 60-67, 1-7 ("Each computer would control multiple CD-R drives, which would serve as the recorders 320, and each CD-R drive would contain a blank CD-R disc, which would serve as the media 330. As the editing process for each digital track file is completed in the editing module 200, the completed digital track files would be copied to the hard drive of each recording controller. The completed digital track files would then be burned onto blank CD-R discs by the CD-R recorders in a manner conforming to the Red Book standard for audio CDs. Although the recording media in this preferred embodiment are CD-R disks, any form of digital recording media capable of recording digital audio and/or video could be used.") (emphasis added). *See also id.* Fig. 1 #300 (depicting a Media Recording Module 300 with a number of recorders and recording media).

		<p>EDAT-Zing card, and combine it with "other .wav files", "mix in other tracks" or use these cards and accompanying software to "rearrange the order of music cuts, etc." <i>Id.</i> at 3.</p> <p>Further, The EDAT Brochure discloses the ability to "make a half-track (mono) or quarter track (stereo) master that is incredibly clean. EDAT then gives you the flexibility to combine that file with other .wav files, mix in other tracks, rearrange the order of music cuts, etc." <i>Id.</i> at 2, ¶ 3, ll. 3-6.</p> <p>Finally, the technique of using more than one PC computer on a network to edit separate files simultaneously was well-known in the art before September 26, 2000 and would have been obvious to one of ordinary skill.</p> <p>Thus, the EDAT Brochure renders obvious the sole additional element of claim 2.</p>
<p>Claim 3 103(a)</p>	<p>The system of claim 2, wherein the event capture module includes one or more event signal sources, a soundboard with a mixer operably connected to the one or more event signal sources for receiving the event signal therefrom, and a primary storage module for storing the event signal into the primary storage file.</p>	<p>As disclosed above, the EDAT Brochure discloses or renders obvious all of the claim elements of claim 2. In addition, the EDAT Brochure discloses a network diagram wherein the EDAT card, and accompanying software, can take a digitized analog signal in the form of a .wav file, generated by the EDAT-Zing card, and combine it with "other .wav files", "mix in other tracks" or use these cards and accompanying software to "rearrange the order of music cuts, etc." <i>Id.</i> at 3.</p> <p>Further, The EDAT Brochure discloses the ability to "make a half-track (mono) or quarter track (stereo) master that is incredibly clean. EDAT then gives you the flexibility to combine that file with other .wav files, mix in other tracks,</p>

		<p>rearrange the order of music cuts, etc." <i>Id.</i> at 2, ¶ 3, ll. 3-6.</p> <p>Finally, the EDAT Brochure discloses the ability of the EDAT-Zing card to "set the file name, gain level, channel format (mono or stereo), as well the option to reverse the audio after it loads onto the hard drive." <i>Id.</i> at 2, ¶ 2, ll. 10-12.</p> <p>Thus, the EDAT Brochure discloses the sole additional element of claim 3.</p>
Claim 4 102(b)	The system of claim 1, further comprising a backup module connected to the event capture module for redundantly saving the primary event file and making it available to the editing module in case the primary event file(s) within the event capture module become inaccessible.	<p>As noted above, the EDAT Brochure discloses all the elements of claim 1. In addition, the EDAT Brochure discloses a PC utilizing the EDAT-Zing card in conjunction with 32 megabytes of Random Access Memory (RAM) for storing the primary event file and a "SCSI II or Ultra DMA Capable Hard Drive" for serving as a backup module in case the primary event file becomes inaccessible. EDAT Brochure at 4; <i>Id.</i> at 2, ¶ 4, ll. 2-3 ("Using the hard drive, one can download information from the PC's hard drive and create a digital master.").</p> <p>Thus, the EDAT brochure discloses the sole additional element of claim 4.</p>
Claim 5 103(a)	The system of claim 4, wherein the soundboard receives one or more event signals from the signal source for processing and combining these signals to generate the output event signal that is provided to the primary storage module.	<p>As noted above, the EDAT Brochure discloses all the elements of claim 4. In addition, it discloses the ability of the EDAT-Zing card to "digitize multiple audio channels (.wav files) from analog sources". <i>Id.</i> at 2, ¶ 1, ll. 4-5.</p> <p>Additionally, "EDAT Zing comes with four channel PCI input card and installation software, and is designed to interface with existing analog playback machines." <i>Id.</i> at 2, ¶ 2, ll. 1-3. It also allows you to "combine that file with other .wav files, mix in other tracks, rearrange the order of music cuts, etc." <i>Id.</i></p>

		<p>at 2, ¶ 2, ll. 4-6.</p> <p>Finally, the EDAT Brochure discloses the ability of the EDAT-Zing card to "set the file name, gain level, channel format (mono or stereo), as well the option to reverse the audio after it loads onto the hard drive." <i>Id.</i> at 2, ¶ 2, ll. 10-12.</p> <p>Thus, the EDAT Brochure discloses the sole additional element of claim 5.</p>
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B. The EDAT Instructions Anticipate and/or Renders Obvious Claims 1-5 of the '729 Patent

A Telex EDAT Instructions document published in October of 1999³² anticipates the '729 Patent. As discussed below, the EDAT Instructions anticipate the '729 Patent and its three main limitations of an event capture module, editing module, and a media recording module. Namely, the EDAT Instructions disclose an EDAT-Zing card to capture live audio as an input signal, a Fast EdDit tool for editing .wav files created from the live audio input signal by the EDAT-Zing card, and the ability to record the .wav files onto multiple media simultaneously. This reference discloses technology that covers all of the claims of the '729 Patent, and invalidate the '729 Patent within the meaning of § 102(a) or 103(a).

The following chart demonstrates element-by-element how the EDAT Instructions anticipates and/or renders obvious claims 1-5 of the '729 Patent:

	'729 Patent	Telex EDAT System
Claim 1 102(a)	<p>1. An event recording system, comprising:</p> <p>(i) an event-capture module to capture an event signal and transform it into a primary event file that is accessible as it is being formed</p>	<p>As outlined above, the EDAT Instructions anticipate claim 1. The EDAT Instructions state that "Live audio can also be used to provide analog input signals." <i>Id.</i> at 3, ¶ 2, ll. 2-3.</p> <p>Moreover, the EDAT Instructions</p>

³² See EDAT Instructions at 36 (lower right corner).

		<p>state that EDAT-Zing "allows you to create digital .wav files from multiple analog or digital sources at once". <i>Id.</i> at 1, ¶ 2, ll. 1-2.</p> <p>Finally, the EDAT Instructions assert that EDAT-Zing "allows you to record analog audio signals, to convert these signals into digital .wav files, and to save these files on your personal computer." <i>Id.</i> at 3, ¶ 1, ll. 1-3.</p>
	<p>(ii) an editing module communicatively connected to the event capture module, wherein the editing module accesses and parses the primary event file into one or more digital track files that can be recorded onto a recording media; and</p>	<p>The EDAT Instructions state that "Included with EDAT is Fast EdDit, a tool for editing your digital files." <i>Id.</i> at 20, ¶ 3, ll. 1.</p> <p>Further, the EDAT Instructions states that EDAT "lets you take a source recording that is noisy and produce a half-track (mono) or quarter track (stereo) master that is incredibly clean. You can then combine that file with other digital .wav files, mix other tracks, rearrange the order of music cuts, or perform other editing tasks." <i>Id.</i> at 20, ¶ 3, ll. 2-6.</p> <p>Additionally, the EDAT Instructions disclose the ability "To organize various .wav files into a .pla (playlist) file, you can use the PlayList Editor software, provided with EDAT." <i>Id.</i> at 24, ¶ 4, ll. 1-2.</p>
	<p>(iii) a media recording module communicatively linked to the editing module for receiving the one or more digital track files, the media recording module having a plurality of media recorders for simultaneously recording the one or more digital track files onto a</p>	<p>The EDAT Instructions describe the ability to "Connect your duplicator module to the interface box". <i>Id.</i> at 23, Fig. 17.</p> <p>Additionally, EDAT hardware connecting diagram depicts multiple copy modules making</p>

	<p>plurality of recording media.</p>	<p>multiple simultaneous copies. <i>Id.</i> at 22.</p> <p>Furthermore, the EDAT Instructions describe how "Telex's EDAT-Zing and EDAT allow you to create digital .wav files, use these .wav files to create master files, and reproduce these master files onto cassettes or other media." <i>Id.</i> at 1, ¶ 1, ll. 1-3.</p> <p>Lastly, the EDAT Instructions describe how "You can then duplicate the master file onto cassettes, CD's, or other media", <i>Id.</i> at 20, ¶ 1, ll. 5-7, and "[w]hen used with the new Telex XGEN cassette duplicator, EDAT can produce copies at 8x or 16x speed, using up to 59 tapes at once." <i>Id.</i> at 20, ¶ 2, ll. 6-8.</p>
<p>Claim 2 103(a)</p>	<p>The system of claim 1, wherein the editing module has two or more editing station <sic> for simultaneously editing different portions of the primary event file in order to generate the one or more digital track files as the event is occurring.</p>	<p>As discussed above, the EDAT Instructions disclose all of the claim limitations of claim 1, and renders claim 2 obvious. Claim 2 depends from claim 1 and attempts to add as its only additional element a second editing station to the editing module. Not only would the mere duplication of the editing module's functionality have been obvious to one of skill in the art under 103(a), but it is also obvious as a mere duplication of parts</p> <p>Specifically, the EDAT Instructions state that "Included with EDAT is Fast EdDit, a tool for editing your digital files." <i>Id.</i> at 20, ¶ 3, ll. 1.</p> <p>Further, the EDAT Instructions states that EDAT "lets you take a source recording that is noisy and</p>

		<p>produce a half-track (mono) or quarter track (stereo) master that is incredibly clean. You can then combine that file with other digital .wav files, mix other tracks, rearrange the order of music cuts, or perform other editing tasks." <i>Id.</i> at 20, ¶ 3, ll. 2-6.</p> <p>Additionally, the EDAT Instructions disclose the ability "To organize various .wav files into a .pla (playlist) file, you can use the PlayList Editor software, provided with EDAT." <i>Id.</i> at 24, ¶ 4, ll. 1-2.</p> <p>Finally, the technique of using more than one PC computer on a network to edit separate files simultaneously was well-known in the art before September 26, 2000 and would have been obvious to one of ordinary skill.</p> <p>Thus, the EDAT Instructions render obvious the sole additional element of claim 2.</p>
<p>Claim 3 103(a)</p>	<p>The system of claim 2, wherein the event capture module includes one or more event signal sources, a soundboard with a mixer operably connected to the one or more event signal sources for receiving the event signal therefrom, and a primary storage module for storing the event signal into the primary storage file.</p>	<p>As disclosed above, the EDAT Instructions disclose or render obvious all of the claim elements of claim 2. In addition, the EDAT Instructions state that "Included with EDAT is Fast EdDit, a tool for editing your digital files." <i>Id.</i> at 20, ¶ 3, ll. 1.</p> <p>Further, the EDAT Instructions disclose the Fast EdDit tool as having soundboard functionality, i.e., that EDAT "lets you take a source recording that is noisy and produce a half-track (mono) or quarter track (stereo) master that is incredibly clean. You can then</p>

		<p>combine that file with other digital .wav files, mix other tracks, rearrange the order of music cuts, or perform other editing tasks." <i>Id.</i> at 20, ¶ 3, ll. 2-6.</p> <p>Additionally, the EDAT Instructions disclose the ability "To organize various .wav files into a .pla (playlist) file, you can use the PlayList Editor software, provided with EDAT." <i>Id.</i> at 24, ¶ 4, ll. 1-2.</p> <p>Finally, the technique of using more than one PC computer on a network to edit separate files simultaneously was well-known in the art before September 26, 2000 and would have been obvious to one of ordinary skill.</p> <p>Thus, the EDAT Instructions disclose the sole additional element of claim 3.</p>
<p>Claim 4 102(a)</p>	<p>The system of claim 1, further comprising a backup module connected to the event capture module for redundantly saving the primary event file and making it available to the editing module in case the primary event file(s) within the event capture module become inaccessible.</p>	<p>As noted above, the EDAT Instructions disclose all the elements of claim 1. In addition, the EDAT Instructions disclose a PC utilizing the EDAT Zing card in conjunction with 32 megabytes of Random Access Memory (RAM) for storing the primary event file and a SCSI II or Ultra DMA Capable Hard Drive for serving as a backup module in case the primary event file becomes inaccessible. EDAT Instructions at 2; <i>Id.</i> at 2, ¶ 1, ll. 1-2 ("Use this procedure to create a cassette master file from a digital .wav or .pla (playlist) file on your computer's hard drive.").</p> <p>Thus, the EDAT Instructions</p>

		disclose the sole additional element of claim 4.
<p>Claim 5 102(a)</p>	<p>The system of claim 4, wherein the soundboard receives one or more event signals from the signal source for processing and combining these signals to generate the output event signal that is provided to the primary storage module.</p>	<p>As noted above, the EDAT Instructions disclose all the elements of claim 4. In addition, the EDAT Instructions state that EDAT-Zing "allows you to create digital .wav files from multiple analog or digital sources at once". <i>Id.</i> at 1, ¶ 2, ll. 1-2.</p> <p>Additionally, "EDAT-Zing consists of one 4-channel Telex PCI audio input card and the EDAT-Zing software. An optional second 4-channel input card can be linked to the first card, allowing you eight channels of input." <i>Id.</i> at 3, ¶ 3, ll. 1-3.</p> <p>Additionally, the EDAT Instructions disclose the ability "To organize various .wav files into a .pla (playlist) file, you can use the PlayList Editor software, provided with EDAT." <i>Id.</i> at 24, ¶ 4, ll. 1-2.</p> <p>Finally, the EDAT Instructions assert that EDAT-Zing "allows you to record analog audio signals, to convert these signals into digital .wav files, and to save these files on your personal computer." <i>Id.</i> at 3, ¶ 1, ll. 1-3.</p> <p>Thus, the EDAT Instructions disclose the sole additional element of claim 5.</p>

C. The EDAT Brochure in view of the CDP Brochure Renders Claim 1 of the '729 Patent Obvious

In the alternative, the above referenced³³ Telex EDAT Brochure in view of a CDP Brochure³⁴ published in 1998³⁵ also invalidates claim 1 of the '729 Patent by rendering it obvious. The network diagram³⁶ in the EDAT Brochure provides a suggestion or motivation to combine the technologies disclosed in the EDAT Brochure and the CDP Brochure. These two references disclose technology that covers all of the limitations of claim 1 of the '729 Patent, and renders claim 1 obvious pursuant to § 103(a).

The following chart demonstrates element-by-element how EDAT Brochure in view of the CDP Brochure Renders claim 1 of the '729 Patent obvious:

	'729 Patent	Telex EDAT System
Claim 1 103(a)	<p>1. An event recording system, comprising:</p> <p>(i) an event-capture module to capture an event signal and transform it into a primary event file that is accessible as it is being formed;</p>	<p>As discussed above, the EDAT Brochure in view of the CDP Brochure renders obvious claim 1. The EDAT Brochure discloses a graphic illustration of a network diagram with an "Analog Input" including a "Mic." EDAT Brochure at 3.</p> <p>Moreover, EDAT Brochure discloses a network diagram wherein the "Analog Input" such as a "Mic." is connected to the EDAT-Zing card and analog signals from this Analog Input device "are loaded directly onto" a PC via the EDAT-Zing card. <i>Id.</i> at 3.</p> <p>Finally, the EDAT Brochure discloses the ability of the EDAT-</p>

³³ See Appendix D.

³⁴ Automatic CD duplicators were well known in the art prior to 1999, and the Telex CDP Brochure was just one of many types and brand of duplicators available on the market prior to the critical date of September 26, 2000. (See Attachment I.).

³⁵ See CDP Brochure at 2 (lower right corner).

³⁶ See EDAT Brochure at 2. See also CDP Brochure at 2 ("The new Telex EDAT Digital Master Duplication Workstation, in conjunction with the CDP 2001 creates the most powerful editing and duplicating workstations on the market").

		<p>Zing card to "digitize multiple audio channels (.wav files) from analog sources". <i>Id.</i> at 2, ¶ 1, ll. 4-5.</p>
	<p>(ii) an editing module communicatively connected to the event capture module, wherein the editing module accesses and parses the primary event file into one or more digital track files that can be recorded onto a recording media; and</p>	<p>The EDAT Brochure discloses a graphic illustration of a network diagram wherein the EDAT-Zing and EDAT cards can take a digitized analog signal in the form of a .wav file and combine it with "other .wav files", "mix in other tracks" or use these cards and accompanying software to "rearrange the order of music cuts, etc." <i>Id.</i> at 3.</p> <p>Additionally, the CDP Brochure describes a Direct SCSI function that: "allows the duplicator...to connect directly to your CPU/EDAT Duplication Workstation." CDP Brochure at 1, ¶ 4, ll. 1-2.</p> <p>Finally, the CDP Brochure states that a user "can even turn incremental writing on or off when copying a master to multisession". <i>Id.</i> at 1, ¶ 5, ll. 2-4</p>
	<p>(iii) a media recording module communicatively linked to the editing module for receiving the one or more digital track files, the media recording module having a plurality of media recorders for simultaneously recording the one or more digital track files onto a plurality of recording media.</p>	<p>The CDP Brochure states that "The new Telex EDAT Digital Master Duplication Workstation, in conjunction with the CDP 2001 creates the most powerful editing and duplicating workstations on the market". <i>Id.</i> at 2.</p> <p>Lastly, CDP Brochure states that "as many as 280 CDs at a time" can be burned using the CDP Brochure in conjunction with an EDAT card. <i>Id.</i> at 1, ¶ 2, ll. 3-4</p>

D. The EDAT Brochure in view of both the EDAT Instructions and Fast EdDit Manual Renders Claim 1 of the '729 Patent Obvious

Alternatively, the Telex EDAT Brochure, in view of both the EDAT Instructions³⁷ published in October of 1999³⁸, and a reference titled Fast EdDit Manual published in 1999³⁹ render claim 1 of the '729 Patent obvious. The network diagram⁴⁰ in the EDAT Brochure provides a suggestion or motivation to combine the technologies disclosed in various Telex-authored references, including those disclosed in the EDAT Brochure, EDAT Instructions Brochure, and the Fast EdDit Manual. These three references disclose technology that covers all of the limitations of claim 1 of the '729 Patent, and renders claim 1 obvious pursuant to § 103(a).

The following chart demonstrates element-by-element how the EDAT Brochure in view of both the User Instructions and Fast EdDit Manual Renders claim 1 of the '729 Patent obvious:

	'729 Patent	Telex EDAT System
Claim 1 103(a)	<p>1. An event recording system, comprising:</p> <p>(i) an event-capture module to capture an event signal and transform it into a primary event file that is accessible as it is being formed;</p>	<p>As outlined above, the EDAT Brochure in view of both the User Instructions and Fast EdDit Manual Renders the '729 Patent Obvious. The EDAT Instructions disclose that "Live audio can also be used to provide analog input signals." EDAT Instructions at 3, ¶ 2, ll. 2-3. <i>See also id.</i> at 1 ("Telex's EDAT-Zing and EDAT allow you to create digital .wav files, use these .wav files to create master files, and reproduce these master files onto cassettes or other media.")</p> <p>Further, the EDAT Brochure discloses a graphic illustration of a network diagram with an "Analog Input" including a "Mic." EDAT Brochure at 3.</p>

³⁷ See Appendix D.

³⁸ See EDAT Instructions at 36 (lower right corner).

³⁹ See Fast EdDit Manual at ii (lower left corner).

⁴⁰ See EDAT Brochure at 3.

		<p>Moreover, EDAT Brochure discloses a network diagram wherein the "Analog Input" such as a "Mic." is connected to the EDAT-Zing card and analog signals from this Analog Input device are "loaded directly onto" a PC via the EDAT-Zing card. <i>Id.</i></p> <p>The Fast EdDit Manual discloses that "The Simultaneous Play/Record feature of Fast EdDit lets you listen to one digital stereo sound file while recording another. For instance, if you have a stereo recording with bass and drums, and you want to lay down a lead guitar track, you would use the play and record operation." Fast EdDit Manual at 40, ¶ 8, ll. 1-4.</p> <p>Finally, the EDAT Brochure discloses the ability of the EDAT-Zing card to "digitize multiple audio channels (.wav files) from analog sources". <i>Id.</i> at 2, ¶ 1, ll. 4-5.</p>
	<p>(ii) an editing module communicatively connected to the event capture module, wherein the editing module accesses and parses the primary event file into one or more digital track files that can be recorded onto a recording media; and</p>	<p>The Fast EdDit Manual discloses that "The Simultaneous Play/Record feature of Fast EdDit lets you listen to one digital stereo sound file while recording another. For instance, if you have a stereo recording with bass and drums, and you want to lay down a lead guitar track, you would use the play and record operation." Fast EdDit Manual at 40, ¶ 8, ll. 1-4. <i>See also id.</i> at 1 ("Fast EdDit software let you edit digital .wav sound files, such as those created using Telex's EDAT Zing, and to arrange sound files in a desired sequence, for your duplicating needs."), ("Fast EdDit displays sound files visually, to let you review each file, identify sounds that need editing, and edit segments of the file.")</p>

		<p>Additionally, the EDAT Brochure discloses a graphic illustration of a network diagram wherein the EDAT-Zing and EDAT cards can take a digitized analog signal in the form of a .wav file and combine it with "other .wav files", "mix in other tracks" or use these cards and accompanying software to "rearrange the order of music cuts, etc." EDAT Brochure at 3.</p> <p>Finally, Fast EdDit Manual disclose some changes that one can make including the ability to:</p> <ul style="list-style-type: none"> • Delete a portion of a .wav file • Repeat a portion of a .wav file • Move a portion of a .wav file • Mute a portion of a .wav file • Reverse a portion of a .wav file • Fade a portion of a .wav file • Crossfade two sounds • Mix a recording over the faded portion • Change the gain of a portion or an entire .wav file • Normalize the volume of a portion or an entire .wav file. <p>Fast EdDit Manual at 1, ¶ 2, ll. 5-15.</p>
	<p>(iii) a media recording module communicatively linked to the editing module for receiving the one or more digital track files, the media recording module having a plurality of media recorders for</p>	<p>The EDAT Brochure discloses a "Digital Output" device in the form of a multiple CD duplicator coupled to the EDAT card. EDAT Brochure at 3.</p> <p>Moreover, the EDAT Brochure discloses the ability to "copy to cassette, or, if you own a CD-R drive and the</p>

	simultaneously recording the one or more digital track files onto a plurality of recording media.	appropriate software, can burn CDs through the EDAT system." <i>Id.</i> at 2, ¶ 4, ll. 6-8.
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E. A Telex EDAT Release in View of the User Instructions Renders Claim 1 of the '729 Patent Obvious

Alternatively, an EDAT Release dated June 2, 1998, in view of the above described EDAT Instructions published in October of 1999⁴¹ renders claim 1 of the '729 Patent obvious. The EDAT Release describes the use of a microphone in conjunction with the EDAT system to capture a live performance. The EDAT system is then used to edit this captured live performance, and simultaneously record this edited live performance to multiple cassettes. In particular, the EDAT Release describes the use of this EDAT system to capture, edit and record a church sermon, and distribute multiple copies of this sermon to parishioners, and in doing so provides a suggestion or motivation to combine. One embodiment of this EDAT system is disclosed in the above referenced EDAT Instructions⁴². These two references together disclose technology that covers all of the limitations of claim 1 of the '729 Patent, and renders it obvious pursuant to § 103(a).

The following chart demonstrates element-by-element how the A Telex EDAT Release in View of the User Instructions Renders claim 1 of the '729 Patent Obvious:

	'729 Patent	Telex EDAT System
Claim 1 103(a)	1. An event recording system, comprising: (i) an event-capture module to capture an event signal and transform it into a primary event file that is accessible as it is being formed	As noted above, the EDAT Release in view of the User Instructions renders claim 1 obvious. The EDAT Release describes an "EDAT" "input source" that includes "wireless or wired microphones". EDAT Release at ¶ 3, ll. 5-6. Furthermore, the EDAT Instructions state "Live audio can also be used to provide analog input signals. The digital .wav files you create can later be duplicated

⁴¹ See EDAT Instructions at 36 (lower right corner).

⁴² See Appendix E.

		<p>onto CD, digital tape, or other media". EDAT Instructions at 3, ¶ 2, ll. 1-4.</p>
	<p>(ii) an editing module communicatively connected to the event capture module, wherein the editing module</p>	<p>The EDAT Instructions disclose a flow chart depicting a CPU with an EDAT-Zing card having "High-speed Analog Input (up to 8 channels)". <i>Id.</i> at 22.</p> <p>Additionally, the EDAT Instructions state, "EDAT-Zing allows you to create digital .wav files from multiple analog or digital sources at once, at speeds up to eight times the normal speed. EDAT allows you to:</p> <ul style="list-style-type: none"> • Create digital master (.mst) files from the .wav or other audio files. • Edit these master files • Duplicate these master files. • Duplicate these master files directly onto cassettes or other media". <i>Id.</i> at 1, ¶ 2, ll. 1-6. <p>Finally, the EDAT Release states that "EDAT offers powerful editing, leveling and mixing functions, allowing instantaneous customization of projects for every situation from a replication company to church ministries." EDAT Release at ¶ 3, ll. 6-8.</p>
	<p>accesses and parses the primary event file into one or more digital track files that can be recorded onto a recording media; and</p>	<p>The EDAT Instructions state that "Included with EDAT is Fast EdDit, at <sic> tool for editing your digital files. Fast EdDit lets you take a source recording that is noisy and produce a half-track (mono) or quarter track stereo master that is incredibly clean. You can then combine that file with other digital .wav files, mix in other tracks, rearrange the order of the music cuts, or perform other editing tasks". EDAT Instructions at 20, ¶ 3, ll. 1-6.</p>

	<p>(iii) a media recording module communicatively linked to the editing module for receiving the one or more digital track files, the media recording module having a plurality of media recorders for simultaneously recording the one or more digital track files onto a plurality of recording media.</p>	<p>The EDAT Instructions disclose a flow chart depicting a CPU operatively coupled to an interface box that, in turn, is operatively coupled to a plurality of copy modules. <i>Id.</i> at 22.</p> <p>Furthermore, the EDAT Instructions disclose the ability to "Duplicate these master files directly onto cassettes or other media". <i>Id.</i> at 1, ¶ 2, line 6.</p> <p>Finally, the EDAT release states "Many times the sermons are recorded on DAT by volunteers with material that needs to be edited. With EDAT, the sermon can be recorded directly onto the hard drive, saving transfer time, and minutes of material can be quickly edited out allowing the duplication of cassettes to proceed. Parishioners, in many cases, receive tapes before they leave to go home." EDAT Release, at ¶ 4, ll. 2-6.</p>
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III. CONCLUSION

For the reasons set forth above, claims 1-5 of the '729 Patent are invalid as anticipated or obvious in light the above referenced Telex-printed publications. EFF respectfully requests that this claim be reexamined and ultimately canceled in its entirety.

Date

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