UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

LONE STAR TARGETED ADVERTISING, LLC, Plaintiff, v. RHYTHMONE, LLC, Defendant.	Civil Action No. COMPLAINT FOR PATENT INFRINGEMENT JURY DEMAND

Plaintiff Lone Star Targeted Advertising, LLC ("LSTA"), for its Complaint against RhythmOne, LLC. ("Defendant" or "RhythmOne"), alleges as follows:

PARTIES

1. Plaintiff Lone Star Targeted Advertising, LLC ("LSTA") is a limited liability company organized under the laws of the State of Texas with its principal place of business in Dallas, Texas.

2. On information and belief, RhythmOne is a registered corporation in the state of Washington, with a principal place of business at 3600 136th Pl. SE, Suite 400, Bellevue, Washington 98006-1468.

JURISDICTION AND VENUE

3. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq*.

4. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because Defendant, on information and belief, has transacted and is transacting business in the District of Washington that includes, but is not limited to, the use of products and systems that practice the subject matter claimed in the patents involved in this action.

6. Venue is proper in this district under 28 U.S.C. 1400(b) because on information and belief, Defendant has committed acts of infringement within this District. In addition, the Defendant is a registered corporation in the State of Washington.

FACTS

7. On October 9, 2001, U.S. Patent No. 6,301,619, entitled "System and Method for Providing Service of Sending Real Time Electronic Information to Selected Individual Viewers of Transmitted Video or Computerized Signals" was duly and legally issued. A true and correct copy of the '619 Patent is attached hereto as Exhibit A. The '619 Patent issued from application Serial Number 09/260,035 filed March 2, 1999. The inventors assigned all right, title and interest in the '619 Patent to Oplus Technologies Ltd. Oplus Technologies Ltd. assigned its entire right, title, and interest in '619 Patent to Lone Star Technological Innovations, LLC, who then assigned its entire right, title, and interest in the '619 Patent to LSTA. LSTA is the sole owner of all rights, title, and interest in and to the '619 Patent including the right to sue for and collect past, present, and future damages and to seek and obtain injunctive or any other relief for infringement of the '619 Patent.

8. On February 21, 2019, LSTA sent a letter to RhythmOne regarding the '619 Patent.

9. Claim 9 of the '619 Patent states:

A method for a sender sending real time electronic information to a viewer of transmitted video signals, the method comprising the steps of:

(a) providing viewer attribute information related to the viewer;

(b) receiving and storing said viewer attribute information by an electronic device, included with an in communication with a television belonging to the view, said viewer attribute information input into said electronic device by the viewer;

(c) providing sender requested electronic information of the sender to be transmitted by request of the sender to the viewer, said sender requested electronic information of the sender is included with a non-viewer provided subset of said viewer attribute information related to the viewer;

(d) providing a service center for communicating to a television station provider of the transmitted video signals encoding instructions to form encoded sender requested electronic information of the sender;

(e) transmitting a compound video signal including said non-viewer provided subset of viewer attribute information and said encoded sender requested electronic information of the sender by said television station provider of the transmitted video signals to said electronic device included with and in communication with said television belonging to the viewer;

(f) making a decision selected from the group consisting of accepting said encoded sender requested electronic information of the sender and not accepting said encoded sender requested electronic information of the sender by said electronic device included with and in communication with said television belonging to the viewer, whereby said decision by said electronic device accepting said encoded sender requested electronic information the sender is made by recognizing said non-viewer provided subset of said viewer attribute information;

(g) decoding said encoded sender requested electronic information of the sender by said electronic device included with and in communication with said television belonging to the viewer to form decoded sender requested electronic information of the sender;

(h) formatting said decoded sender requested electronic information of the sender by said electronic device included with and in communication with said television belonging to the viewer to form formatted decoded sender requested electronic information of the sender;

(i) opening up of a subwindow within said television belonging to the viewer; and

(j) displaying said formatted decoder sender requested electronic information of the sender within said subwindow within said television belonging to the viewer.

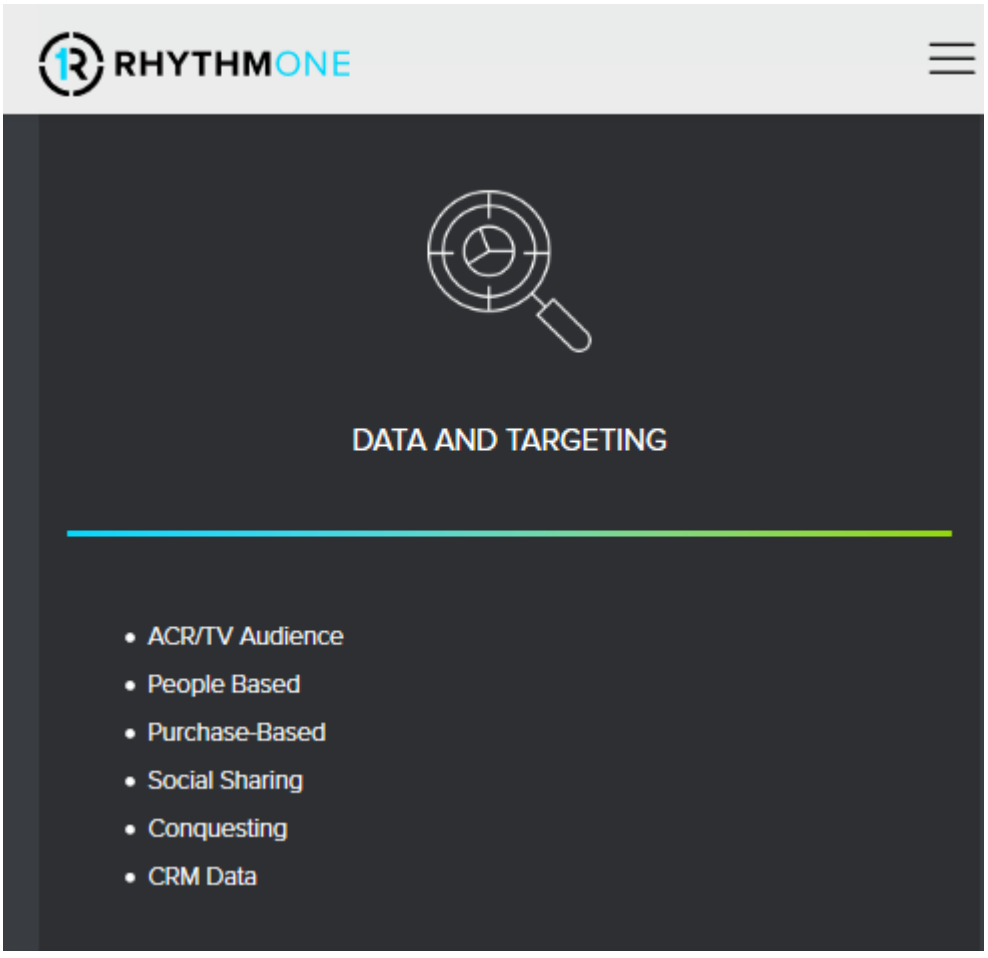
On information and belief, RhythmOne infringes Claim 9 of the ’619 Patent. As stated on its website: “The future of television is now. Advanced TV — encompassing connected TVs (CTV), smart TVs, over the top (OTT) video, interactive TV, addressable TV and more — is handing

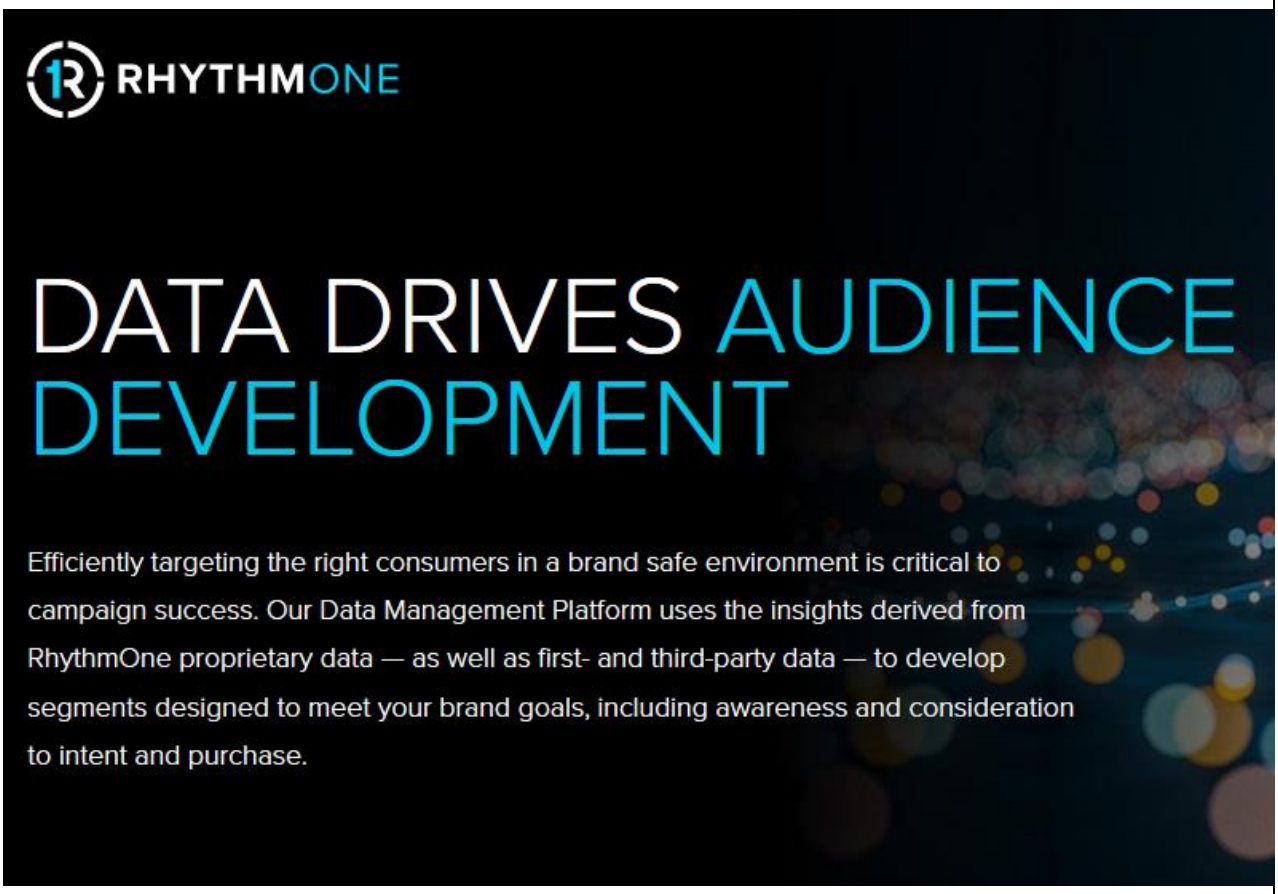
control to viewers and affecting how, when, and what they consume through their TVs. As one of the leaders in Advanced TV for over 10 years, our YuMe by RhythmOne solution provides scale, precision targeting, custom creative, and unique measurement solutions that let brands extend their linear TV and multiscreen digital campaigns to connected audiences."

See https://www.rhythmone.com/advertisers/advancedtv#mWSysQx66oHC0p57.97

10. RhythmOne's system infringes each element of Claim 9 as follows:

a. "providing viewer attributable information related to the viewer" – RhythmOne's platform provides viewer attributed information related to the viewer, it utilizes viewer attribute information via advanced audience analytics, in particular:




RHYTHMONE
DATA DRIVES AUDIENCE DEVELOPMENT
Efficiently targeting the right consumers in a brand safe environment is critical to campaign success. Our Data Management Platform uses the insights derived from RhythmOne proprietary data — as well as first- and third-party data — to develop segments designed to meet your brand goals, including awareness and consideration to intent and purchase.

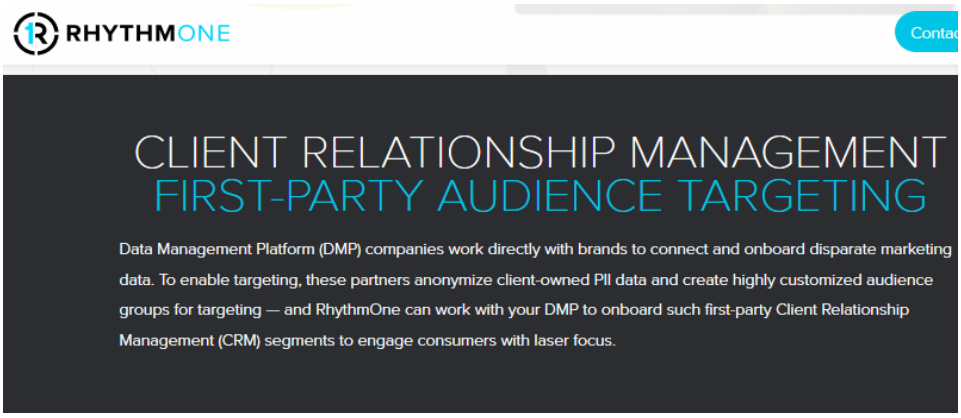
RHYTHMONE
Contact
YOUR DATA
OUR DATA
THIRD-PARTY DATA
Demographics
Psychographics
Clicks
Shares (including dark social)
CPA, CPE, CPL
Interests
Purchase behaviors
Events
Mobile attribution
In-app behaviors
Browsing habits
Content consumption

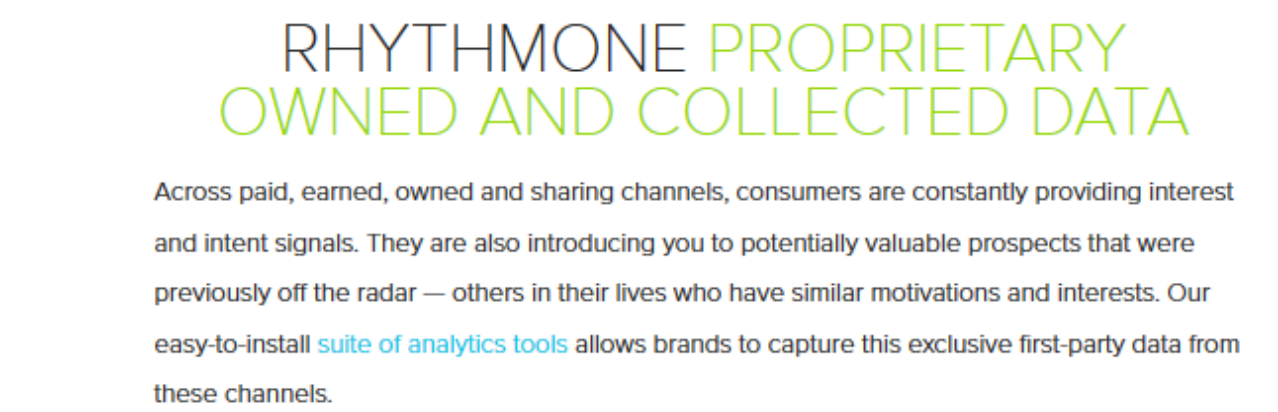
b. "receiving and storing said viewer attribute information by an electronic device included with an in communication with a television belonging to the viewer, said viewer attribute information input into said electronic device by the viewer" – In order for RhythmOne to utilize its platform and analytical system, an electronic device of the viewer's is in communication with a TV in order to obtain "real-time" audience data and insights. For most viewers, on information and belief, this will be a set top box that provides the real-time analytics information to the "sender." As stated by RhythmOne, "The RhythmOne Advanced TV Audience Guarantee offers marketers and media buyers the following benefits:

- **In-target audience delivery at scale.** RhythmOne helps brands connect with intended ages and genders. The platform optimizes impression delivery to target digital TV audiences across its controlled and partnered supply.
- **Reach and frequency insights.** Metrics include how many unique individuals a brand has reached and how often within a campaign.
- **Person-level viewership in households.** Measurement accounts for all viewers in a room with co-viewing calibration from comScore, delivering a complete view of the total audience exposed to a brand's video."

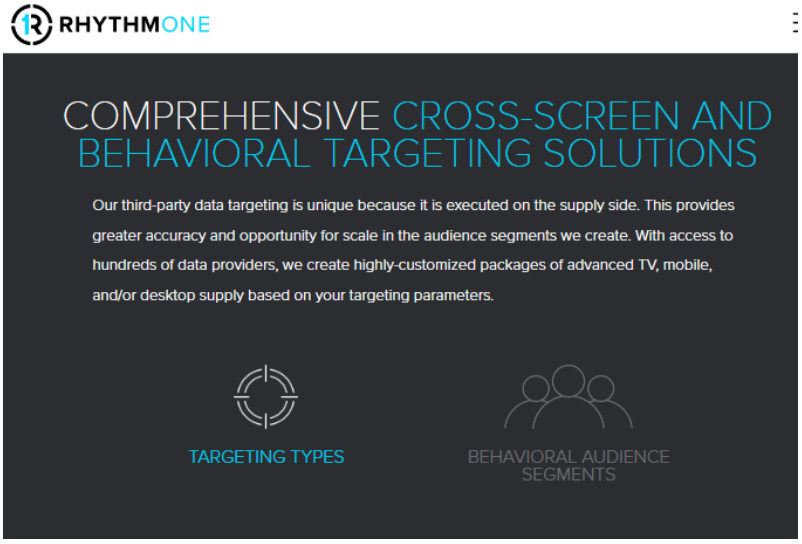
See https://www.rhythmone.com/news/2018/07/31/rhythmone-guarantees-advanced-tv-audience-delivery-to-help-marketers-and-media-buyers-maximize-targeted-reach-and-campaign-performance#eDEBxI1C4hwFQKRO.97.

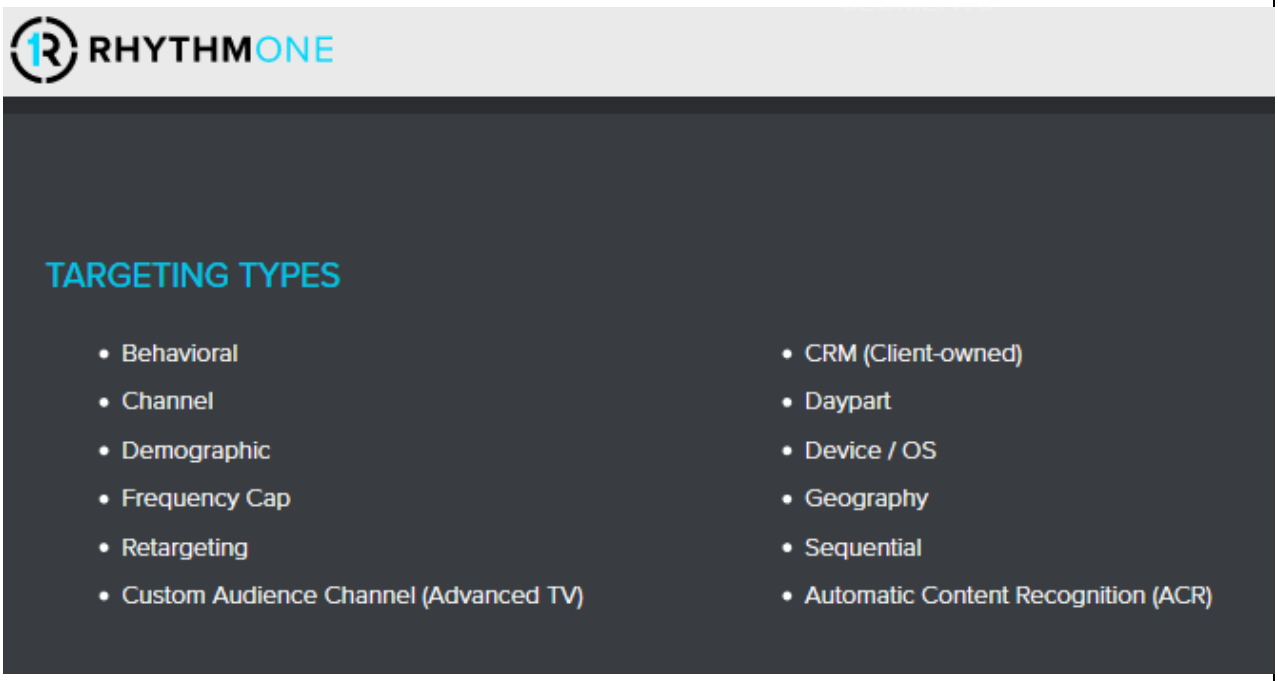
In addition, RhythmOne discusses targeting:

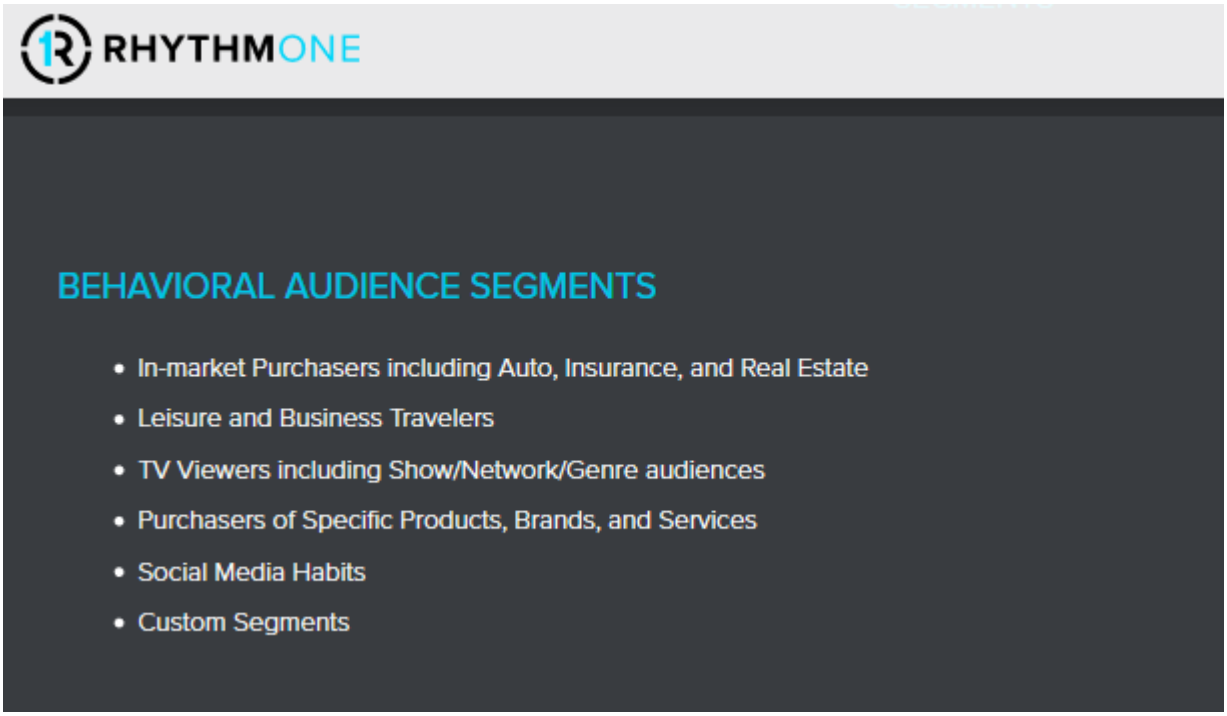


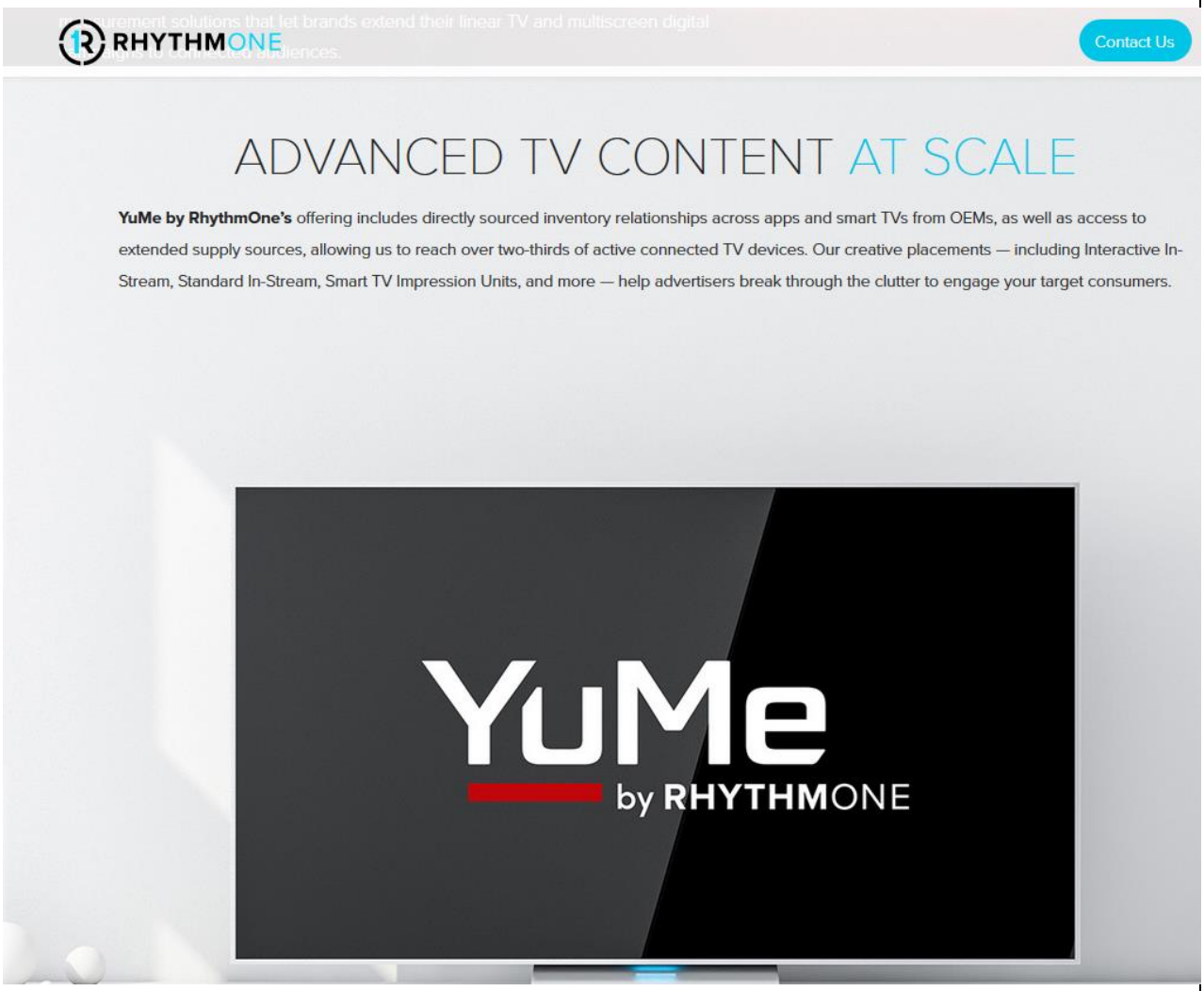


c. "providing sender requested electronic information of the sender to be transmitted by request of the sender to the viewer, said sender requested electronic information of the sender is included with a non-viewer provided subset of said viewer attribute information related to the viewer" -- On information and belief, targeted advertisement based on the campaign being run using RhythmOne's platform meets this requirement, as the sender is requesting the sending of information from sender to viewer based on viewer attributable information. As discussed on RhythmOne's website:




RHYTHMONE
TARGETING TYPES
• Behavioral
• Channel
• Demographic
• Frequency Cap
• Retargeting
• Custom Audience Channel (Advanced TV)
• CRM (Client-owned)
• Daypart
• Device / OS
• Geography
• Sequential
• Automatic Content Recognition (ACR)


RHYTHMONE
BEHAVIORAL AUDIENCE SEGMENTS
• In-market Purchasers including Auto, Insurance, and Real Estate
• Leisure and Business Travelers
• TV Viewers including Show/Network/Genre audiences
• Purchasers of Specific Products, Brands, and Services
• Social Media Habits
• Custom Segments



In addition, per the standard process of OTT ad insertion, ad content and targeting attributes must necessarily be encoded, formatted, and transmitted: "While there are many protocols used in OTT, they all work as follows (see Figure 3):

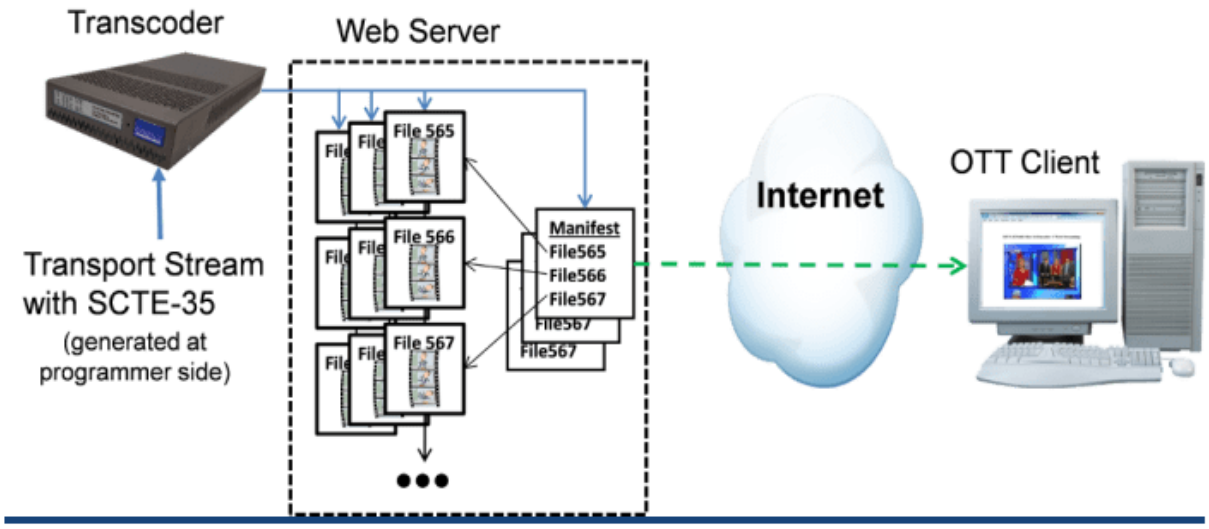
- The original transport stream from the programmer side (possibly decorated with SCTE-35 markers) goes to a transcoder device.
- The **transcoder device** produces several versions of the stream, at **different resolutions and bit rates**. These versions are called "profiles."
- Each profile is further divided into individual files, called segments. Each segment is **individually decodable**—in other words, no data from a previous segment is required to start decoding it and it can be decoded up to its last frame, with no data required from the

next segment. For H.264 streams, the segment starts on an IDR ("Instantaneous Decoding Refresh") frame and the last GOP ("Group Of Pictures") of the segment is closed.

- Segments correspond to a few seconds of video (between 2 and 30 seconds, typically around 5 to 10 seconds).
- Segments are placed in a web server.

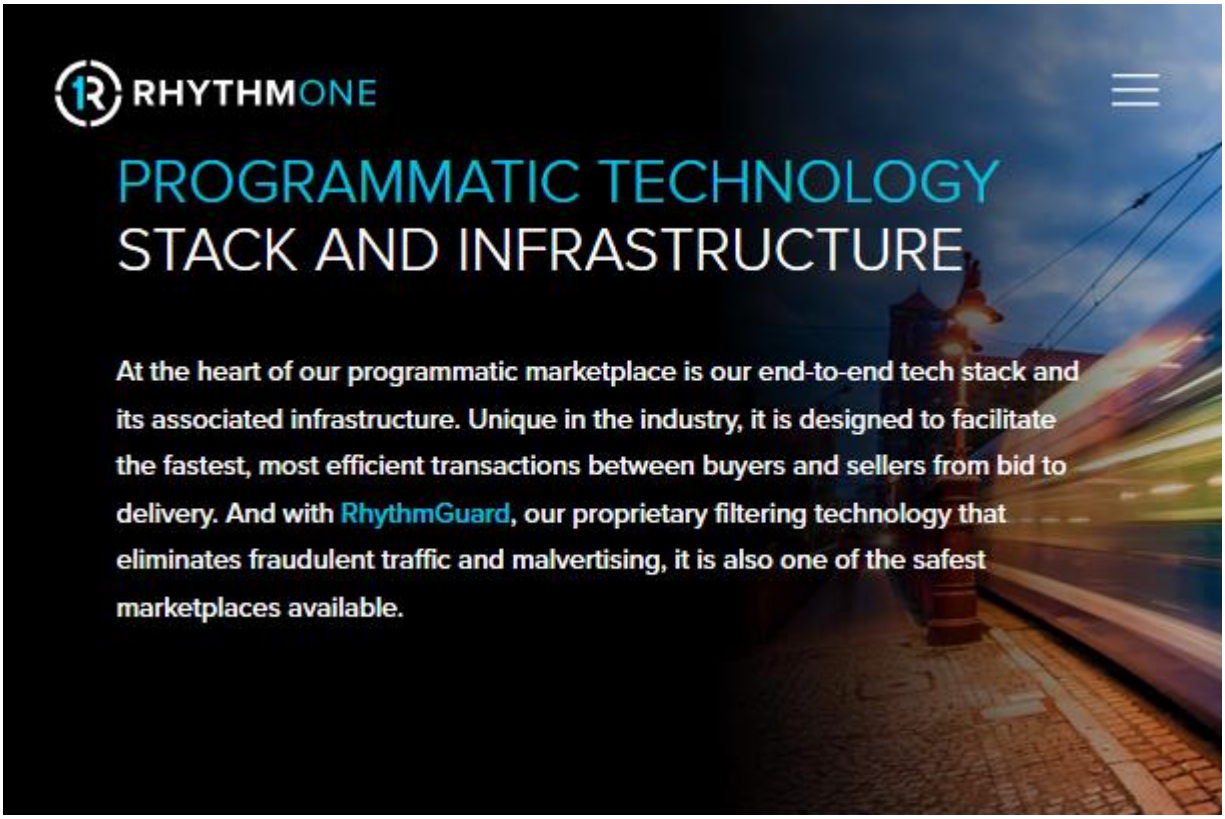
A "manifest" is also placed in the web server. The manifest lists the segments and **there is a top-level manifest that lists the available profiles and their characteristics**. Manifests are text files, and their format changes from standard to standard."

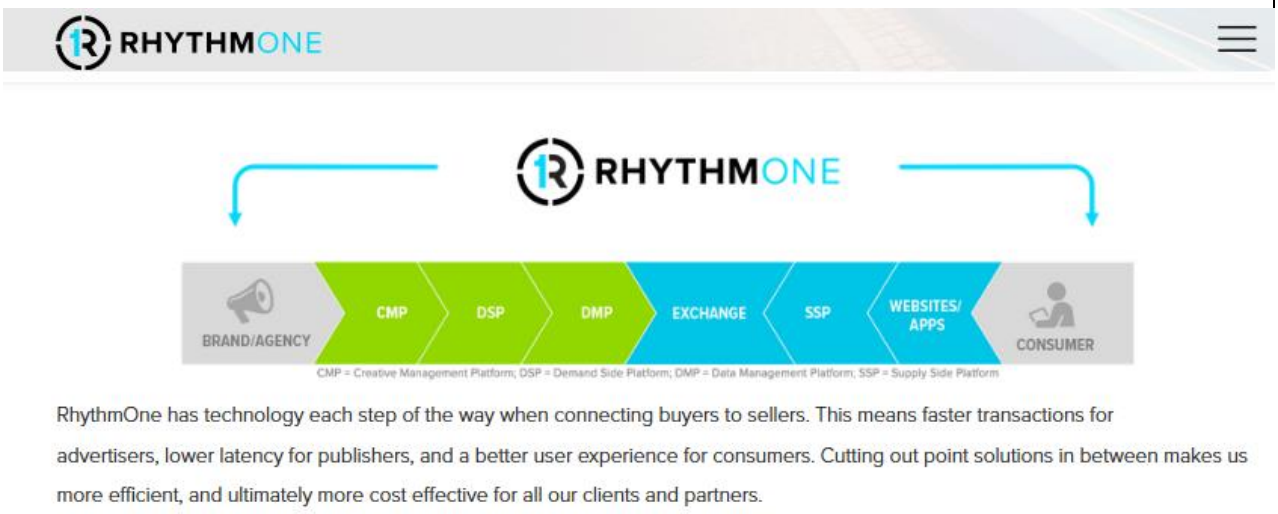
Figure 3: Basic OTT operation



See https://www.tvtechnology.com/opinions/scte10435-and-beyond-a-look-at-ad-insertion-in-an-ott-world

d. "providing a service center for communicating to a television station provider of the transmitted video signals encoding instructions to form encoded sender requested electronic information of the sender" -- RhythmOne's YuMe is the service center that interfaces in providing information of advertiser, content provider, and the viewer.





e. "transmitting a compound video signal including said non-viewer provided subset of viewer attribute information and said encoded sender requested electronic information of the sender by said television station provider of the transmitted video signals to said electronic device included with and in communication with said television belonging to the

viewer." -- This element is met as RhythmOne transmits and sends encoded information, e.g. video to viewers including non-viewer provided information in order to deliver ads targeted to the viewer, especially in regard to the RhythmOne's platform's ability to:"provide scale, precision targeting, custom creative, and unique measurement solutions that let brands extend their linear TV and multiscreen digital campaigns to connected audiences." *See* https://www.rhythmone.com/advertisers/advancedtv#F2yJVIbSp64UjqIB.97

"As smart TV ownership and CTV viewing continues to rise, innovative monetization models are rapidly emerging to reach a growing audience of cord cutters and cord-nevers," said Jorg Nowak, Senior Vice President of Global Sales, RhythmOne. "The ability for our Smart TV Impression Units to reach audiences – sometimes as the 'last stop' before entering non-ad supported streaming services – is invaluable for advertisers as a way to engage with these hard to reach consumers on the biggest screen in the home."

YuMe by RhythmOne's Smart TV Impression Units run in highly visible positions throughout the viewing experience, including the TV's home screen, content store, and apps, as viewers look for and browse content. They also offer a variety of available post-click actions such as click-to-video, click-to-website, click-to-custom micro-site, and click-to-app, all of which are full-screen experiences. This ad unit is particularly effective when trying to get in front of consumers who are about to enter non-ad-supported content." *See* https://www.rhythmone.com/news/2018/11/27/RhythmOne-Expands-Suite-of-Smart-TV-Impression-Units-for-Advanced-TV-Advertising#Deu1kOBFb4Dl8uYt.97

f. "making a decision selected from the group consisting of accepting said encoded sender requested electronic information of the sender and not accepting said encoded sender requested electronic information of the sender by said electronic device included with and in communication with said television belonging to the viewer, whereby said decision by said electronic device accepting said encoded sender requested electronic information the sender is made by recognizing said non-viewer provided subset of said viewer attribute information" – On information and belief, inherently, the only logical next step for said device is to determine

whether to accept (for purposes of viewing/displaying) said sender requested electronic information based on whether the transmitted subset of viewer attribute information matches viewer attribute information on the device. The device determines whether a given transmission is intended for it by checking if the transmission is tagged with attributes matching its own local attributes.

Per the standard process of OTT ad insertion: "Playback devices will read the top level manifest and learn the available profiles. **They will then decide on a profile, read its individual manifest and start reading decoding the segments**. If the network conditions change, the playback device may switch to a higher or lower profile as needed. On a live stream, manifests are frequently updated." *See* https://www.tvtechnology.com/opinions/scte10435-and-beyond-a-look-at-ad-insertion-in-an-ott-world.

g. "decoding said encoded sender requested electronic information of the sender by said electronic device included with and in communication with said television belonging to the viewer to form decoded sender requested electronic information of the sender" – On information and belief, encoded information is decoded in order for the information to be displayed to the viewer.

h. "formatting said decoded sender requested electronic information of the sender by said electronic device included with and in communication with said television belonging to the viewer to form formatted decoded sender requested electronic information of the sender" – On information and belief, decoded information is necessarily formatted in an appropriate manner consistent with the display requirements of the television with which it is in communication.

i. "opening up of a subwindow within said television belonging to the viewer" – A television screen displays content. Within the television, on information and belief, there are other windows, such as when choosing the menu which pops up. At least for example, when dynamic brand insertion is utilized.

j. " and, displaying said formatted decoder sender requested electronic information of the sender within said subwindow within said television belonging to the viewer" -- On information and belief, after accepting, decoding, and formatting sender requested electronic information, the electronic device necessarily displays said sender requested electronic information.

FIRST CLAIM FOR RELIEF

Patent Infringement of the '619 Patent (35 U.S.C. §§ 101, et seq.)

11. LSTA refers to and incorporates herein by reference paragraphs 1-10.

12. Defendant infringed, either directly or indirectly, at least Claim 9 of the '619 Patent in this judicial district and the United States, through the services they provided as outlined at www.RhythmOne and as described above.

13. Defendant, therefore, by the acts complained of herein, made, used, sold, or offered for sale in the United States, including in the District of Washington, products and/or services embodying the patented method, and have in the past infringed the '619 Patent, either literally or under the doctrine of equivalents, pursuant to 35 U.S.C. §271(a).

14. To the extent that some elements of claim 9 were performed by a different party than RhythmOne, RhythmOne participated in the infringement (as described above) and received a benefit upon performance of the steps of the patented method. For example, RhythmOne provided the software and technology that established viewer attribute information related to the viewer that can be collected, and how that information was transmitted, received, stored and acted upon in accordance with the patented method. RhythmOne received a benefit from such actions by the customer and television station provider as it allowed targeted advertising to be displayed through the set top box.

15. Upon information and belief, the acts described above concerning the use, offer for sale, sale, operation, distribution, and/or installation of RhythmOne's products and/or software and those described below also constitute acts of induced and contributory infringement. Customers and users used the infringing products and software to provide targeted ads.

16. To the extent that some elements of a claim were performed by a different party than RhythmOne, RhythmOne, through its software and infringing products, participated in the infringement (as described herein) and receives a benefit upon performance of steps of a patented method. For example, RhythmOne provided the software and technology that established viewer attribute information related to the viewer that can be collected, and how that information was transmitted, received, stored and acted upon in accordance with the patented method. RhythmOne received a benefit from such actions by the customer and television station provider as it allowed targeted advertising to be displayed.

17. Upon information and belief, RhythmOne provided its customers and/or users of its products and software instructions to use, load and operate in an infringing manner or to create and use infringing products. Upon information and belief, RhythmOne further induced its customers and/or users of RhythmOne's platform to use its products (and accompanying software) by providing subscriptions to RhythmOne's platform. Further, RhythmOne had actively induced infringement by its customers and/or users of RhythmOne's products and software in this judicial district. Upon information and belief, RhythmOne knowingly and specifically designed RhythmOne's platform in a manner that infringed the '619 Patent. Upon information that belief, RhythmOne also provides support services for claim 9 of the '619 Patent. RhythmOne's targeted advertising method has no substantial non-infringing use. RhythmOne has acted with specific intent to induce or cause infringement and to conduct acts of infringement as described herein within the jurisdiction and elsewhere. Upon information and belief, RhythmOne continued to provide instructions since having notice and actual knowledge of the '619 Patent.

18. Upon information and belief, RhythmOne's method has no substantial non-infringing uses and is especially made and/or adapted so as to infringe the '619 Patent. RhythmOne has acted with specific intent to induce or cause infringement and to conduct acts of infringement as described herein within this District and elsewhere.

19. Plaintiff has complied with the notice requirement of 35 U.S.C. § 287 and does not currently make, use, sell, offer for sale products or services embodying the '619 Patent.

20. Plaintiff reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contentions or claim construction purposes by the infringement allegations that it provides with this Complaint. The element-by-element analysis herein is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rule of Civil Procedure and does not represent Plaintiff's preliminary or final infringement contentions or preliminary or final claim construction positions.

21. By reason of the acts of RhythmOne alleged herein, LSTA has suffered damage in an amount to be proved at trial.

JURY DEMAND

LSTA demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, LSTA prays for relief as follows:

A. Judgment that Defendant has directly infringed, and induced others to infringe, the '619 Patent either literally and/or under the doctrine of equivalents;

B. Judgment awarding LSTA general and/or specific damages, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of Defendant's profits or gains of any kind from their acts of patent infringement from six years prior to the filing of the complaint until March 2, 2019;

C. Judgment awarding LSTA all of its costs, including its attorneys' fees, incurred in prosecuting this action, including, without limitation, pursuant to 35 U.S.C. § 285 and other applicable law;

D. Judgment awarding LSTA pre-judgment and post-judgment interest; and

E. Judgment awarding LSTA such other and further relief as the Court may deem just and proper.

Dated: September 13, 2019

Respectfully submitted,

BANIE & ISHIMOTO LLP

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