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Paper No. 7
Entered: March 6, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

CONVERGENT MEDIA SOLUTIONS, LLC,
Patent Owner.

Case IPR2016-01811
Patent 8,527,640 B2

Before JAMESON LEE, KEN B. BARRETT, and JOHN F. HORVATH, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background and Summary

Netflix, Inc. ("Petitioner") filed a Petition requesting *inter partes* review of U.S. Patent No. 8,527,640 B2 ("the '640 patent," Ex. 1029). Paper 2 ("Pet."). The Petition challenges the patentability of claims 1, 2, 5, 11–13, 18, 26, 32, 36, 68, 73, 95, 102, 112–114, 121, 128, 141, 170, 171, and 188 of the '640 patent on the grounds of obviousness under 35 U.S.C. § 103. Convergent Media Solutions, LLC (Patent Owner) did not file a Preliminary Response to the Petition.

Having considered the arguments and evidence presented by Petitioner, and in the absence of a preliminary response from Patent Owner, we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail in establishing the unpatentability of each of claims 1, 5, 12, 13, 26, 32, 36, 68, 73, 95, 102, 112–114, 121, 128, 141, 170, 171, and 188 of the '640 patent. Petitioner has not, however, shown a reasonable likelihood that it would prevail in establishing the unpatentability of claims 2, 11, and 18 of the '640 patent.

B. Related Proceedings

One or both parties identify, as matters involving or related to the '640 patent, *Convergent Media Solutions, LLC v. Netflix, Inc.*, No. 3:15-cv-02160-M (N.D. Tex), *Convergent Media Solutions, LLC v. AT&T, Inc.*, 3:15-cv-2156-M (N.D. Tex.), and Patent Trial and Appeal Board cases IPR2016-01761 (U.S. Patent No. 8,850,507), IPR2016-01812 (U.S. Patent

No. 8,640,183[1]), IPR2016-01813 (U.S. Patent No. 8,689,273), and IPR2016-01814 (U.S. Patent No. 8,914,840). Pet. 2; Paper 4.

C. The '640 Patent

The '640 patent states, in a section titled as "SUMMARY OF VARIOUS EMBODIMENTS OF THE INVENTION":

> According to embodiments of the present invention there are provided systems and methods for navigating hypermedia using multiple coordinated input/output device sets. Embodiments of the invention *allow a user and/or an author to control what resources are presented on which device sets* (whether they arc [sic] integrated or not), and provide for coordinating browsing activities to enable such a user interface to be employed across multiple independent systems. Embodiments of the invention support new and enriched aspects and applications of hypermedia browsing and related business activities.

Ex. 1029, 3:10–20 (emphasis added). The device sets may include a television (TV) or interactive television (ITV) system which commonly includes a set-top box (STB), a personal computer (PC) including a desktop or laptop/notebook, a personal digital assistant (PDA), a phone, video cassette recorders (VCRs), and digital video recorders (DVRs). *Id.* at 18:55–57, 19:31–35, 24:54–61. The '640 patent characterizes audio and video as examples of "continuous media," which refers to "any representation of 'content' elements that have an intrinsic duration, that continue (or extend) and may change over time," and includes "both 'stored formats' and 'streams' or streaming transmission formats." *Id.* at 20:4–12.

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[1] U.S. Patent No. 8,640,183 also is the subject of PTAB case *Unified Patents Inc. v. Convergent Media Solutions, LLC*, IPR2016-00047.

The ’640 patent describes a migration of a session from one system to another. *Id.* at 32:58–34:62. The ’640 patent explains that “[t]he terms ‘transfer’ and ‘migrate’ are used synonymously to refer to the movement of the locus of work of a session, such as from one system or device set to another” and “[t]he term ‘clone’ is used to refer to a transfer that duplicates the current resource presentation of a session at a second device set.” *Id.* at 11:28–34. The described migration involves transfer of state data, including the time-position in continuous media content, from the first to the second system. *See id.* at 33:20–52, 34:8–33.

D. Illustrative Claim

Claims 1, 2, 5, 11–13, and 18 are independent claims. The remaining challenged claims depend from Claim 1. Claim 1, reproduced below with bracketed annotations inserted for identifying specific limitations, is illustrative:

> 1. A method for cloning a session that includes a presentation of a continuous media resource on a first device set, the method comprising:
>
> [A] accessing via a programmed computer a session state record that includes continuous media resource identity data and a designation of a particular time position in the presentation of the continuous media resource on the first device set;
>
> [B] facilitating via the programmed computer the cloning of the session associated with the accessed session state record to produce a cloned session at a second device set, the cloned session including a presentation of the continuous media resource on the second device set from a target presentation time position derived from the designation of the particular time position;
>
> [C] prior to the start of the cloned session, enabling the presentation at the first device set to be stopped based on a first

user input received from at least one of the first device set and the second device set;

[D] prior to the start of the cloned session, enabling options for the target presentation time position for the cloned session to be adjusted, wherein the options include at least an option to make an adjustment and an option to make no adjustment, based on receipt of a second user input from at least one of the first device set and the second device set; and

[E] in the event that the presentation of the continuous media resource on the first device set was not stopped in response to the first user input, continuing the presentation of the continuous media resource on the first device set after the cloning subject to user control of time position of the presentation of the continuous media resource on the first device set independently of user control of time position of the presentation of the continuous media resource on the second device set, and

[F] wherein the continuous media resource is to be viewed by a consumer.

Ex. 1029, 164:26–62.

E. Applied References and Asserted Ground of Unpatentability

Reference			**Exhibit No.**
Katz et al.	US 7,103,906 B1	Filed Sept. 29, 2000; Issued Sept. 5, 2006	Ex. 1033
Thomas	US 7,650,621 B2	Filed Oct. 9, 2001; Issued Jan. 19, 2010	Ex. 1034

Petitioner also relies on the Declaration of Dr. Andrew Wolfe, dated Sept. 15, 2016, (Ex. 1028) in support of its arguments. Petitioner maintains that all of the challenged claims—claims 1, 2, 5, 11–13, 18, 26, 32, 36, 68, 73, 95, 102, 112–114, 121, 128, 141, 170, 171, and 188 of the ’640 patent—are unpatentable under 35 U.S.C. § 103(a) as being obvious over Katz and Thomas.

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