

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COMCAST CABLE COMMUNICATIONS, LLC,  
Petitioner,

v.

ROVI GUIDES, INC.,  
Patent Owner.

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Case IPR2017-00217  
Patent 7,996,864 B2

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Record of Oral Hearing  
Held: February 7, 2018

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Before: JENNIFER S. BISK, BARBARA A. BENOIT, and TERRENCE  
W. McMILLIN, *Administrative Patent Judges*.

Case IPR2017-00217  
Patent 7,996,864 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Wednesday, February 7, 2018, commencing at 1:04 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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3 JUDGE BENOIT: Good afternoon. We are convened for oral  
4 argument in IPR2017-00217 which challenges U.S. patent 7,996,864.  
5 I'm Judge Benoit. With me in Alexandria is Judge Bisk. Appearing by  
6 video is Judge McMillin.

7 Let's start with appearances. Petitioner?

8 MR. MEEKER: Your Honor, Fred Meeker with the law firm of  
9 Banner & Witcoff representing petitioner, Comcast Cable  
10 Communications, LLC. With me are Brad Wright, who will be doing the  
11 argument, today, one of my partners. I have Craig Kronenthal and Scott  
12 Kelly, also two of my partners. And we have a representative from  
13 Comcast Cable Communications, Seth Kramer, who is counsel with the  
14 company. I do have two copies of the materials. You may already have  
15 them printed, but I can hand these up as courtesy copies, if you would  
16 like.

17 JUDGE BENOIT: That would be great. Thank you.

18 MR. MEEKER: May I approach, Your Honor?

19 JUDGE BENOIT: Yes.

20 MR. McKEOWN: Good afternoon, Your Honor. Scott  
21 McKeown of Ropes & Gray. I'm joined today by Mark Rowland and  
22 James Batchelder as well as Josef Schenker, all of Ropes & Gray. We  
23 have two representatives of the patent owner, Michael Schwartz and  
24 Efrain Staino. I will be principally arguing and splitting some time with  
25 Mr. Batchelder.

1 JUDGE BENOIT: Welcome to everyone. Thank you for  
2 coming. Each side will have 60 minutes to argue, as reflected in our oral  
3 hearing order. Petitioner has the ultimate burden of proving  
4 unpatentability and will argue first and may reserve rebuttal time.  
5 Petitioner, you may begin when ready.

6 MR. WRIGHT: Thank you. Brad Wright with the law firm  
7 Banner & Witcoff here in Washington on behalf of the petitioner,  
8 Comcast. I would like to reserve 15 minutes of rebuttal time, please,  
9 leaving 45 minutes for opening.

10 JUDGE BENOIT: If you would just give me a minute to set  
11 the clock, please. Sorry for the interruption. You may begin when ready.

12 MR. WRIGHT: Thank you very much. I'd like to start with the  
13 big picture, if we could turn to slide 5, please. And I know Judge  
14 McMillin is remote, so I'll do my best to make sure we are on the correct  
15 slide, which is 5. So what's shown in slide 5 is Figure 3 of the '864  
16 patent. As we can see, the patent claims a program guide that's been split  
17 up into three different areas. There's a first area at the bottom which has  
18 a plurality of program listings. There's a second area in the upper left  
19 which is a video window corresponding to one of the programs in the  
20 guide. And there's a third area in the upper right corner that has a  
21 detailed description corresponding to one of the selected programs down  
22 below.

23 This is exactly what the primary reference, Rauch, shows, a  
24 program guide with three areas having these three functionalities. The  
25 only difference between what's claimed in the patent and shown here, and

1 the closest reference, Rauch, which is used in our first two combinations,  
2 is what happens with that second area in the upper left corner. In the  
3 prior art, as in Rauch, as the user moves through the program listings in  
4 the first area, the detailed program description in the third area changes to  
5 correspond to it. And the video also changes to correspond to the  
6 selected area. The difference between that and what's claimed in the  
7 independent claims of the '864 patent is that the second area does not  
8 change in this configuration as the user moves through the guide.

9 So the question is, would it have been obvious to change the  
10 functionality of the second area so that it doesn't change, unlike Rauch?  
11 And the answer is yes. In fact, we found three references that the patent  
12 examiner did not rely on that show this. There's Bennington, there's  
13 Florin and there's Young. And I'll discuss those in more detail shortly.

14 If we could turn to slide 6, this is claim 1 of the '864 patent  
15 which the patent owner has not disputed is representative of all the  
16 independent claims. And it has two steps. Step 1B, the simultaneously  
17 displaying -- and it's color-coded to correspond to the three windows. A  
18 plurality of television program listings in a first area of the screen, a  
19 currently broadcast television program received by the tuner in a second  
20 non-overlapping area of the screen and a detailed program description of  
21 the currently broadcast television program displayed in the second area in  
22 a third non-overlapping area. That is shown by Rauch. The original  
23 patent examiner concluded that that was shown by Rauch. And the only  
24 difference between Rauch and this claim is the second step. And that is  
25 switching the detailed program description displayed in the third area of

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