

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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Cases IPR2017-00742 and IPR2017-00744  
Patent 8,621,512 B2

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Record of Oral Hearing  
Held: May 9, 2018

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

Cases IPR2017-00742; IPR2017-00744  
Patent 8,621,512 B2

APPEARANCES:

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The above-entitled matter came on for hearing on Wednesday, May 9, 2018, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

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2 JUDGE BISK: Good afternoon. Judge McMillin, can you hear me?

3 JUDGE MCMILLIN: I can. Good afternoon.

4 JUDGE BISK: Okay, thank you. We are convened for oral argument  
5 in IPR 2017-00742 and IPR 2017-0744. Both of which challenge U.S.  
6 Patent 8,621,512.

7 I am Judge Bisk here with Judge Benoit in Alexandria and Judge  
8 McMillin as you can see is appearing by video. Let's start with appearances.  
9 Petitioner?

10 MR. MEEKER: Your Honor, Fred Meeker with the law firm of  
11 Banner and Witcoff representing Comcast Cable Communications, LLC.  
12 With me is Tim Meece who will be making the oral argument today. Chris  
13 Galafano who will be on the audio visual equipment and Scott Kelly as well.  
14 Thank you, Your Honor.

15 JUDGE BISK: Okay. Patent owner.

16 MS. HIGGINS: Good afternoon, Your Honor. Gabrielle Higgins  
17 from the law firm of Ropes & Gray. With me is lead counsel Mark Roland,  
18 Scott McKeown, Henry Huang as well as Bruce Yen from Rovi Guides.

19 JUDGE BISK: Okay, thank you. Each side will have up to 90  
20 minutes to argue. Petitioner has the ultimate burden of establishing  
21 unpatentability and will proceed first to present his case and may reserve  
22 rebuttal time. Petitioner, you may begin when ready.

23 MR. MEECE: Thank you, Your Honor.

24 JUDGE BISK: And can you start with telling me how much rebuttal  
25 time you want if any.

26 MR. MEECE: Yes, we would like to reserve 30 minutes.

1 JUDGE BISK: 30 minutes, okay. So I'm setting the timer for 50  
2 minutes just so you know when that time is up. I'm new at this timer so  
3 hopefully it works.

4 MR. MEECE: No problem. It is right in front of me, I shouldn't miss  
5 it.

6 JUDGE BISK: Okay.

7 MR. MEECE: Thank you. Well, good afternoon. May it please the  
8 Board. I would like to start today first with the broadest reasonable  
9 interpretation because I believe it is a case dispositive issue for both  
10 petitions in this case. As you know, Rovi won a broad construction under  
11 *Phillips* in the ITC for infringement purposes. However, despite a  
12 presumption of validity, the ITC --

13 JUDGE BISK: I'm sorry, I was just going to ask if you could update  
14 us on the status of that ITC case.

15 MR. MEECE: Actually I don't have an update for you. Maybe my --

16 MR. MEEKER: Your Honor, Fred Meeker. The status is the case is  
17 on appeal currently and, I think on an expedited briefing schedule and that's  
18 really all I have on that.

19 JUDGE BISK: All right, thank you.

20 JUDGE BENOIT: And how about the Southern District of New York  
21 case?

22 MR. MEEKER: That case has been stayed pending the outcome of  
23 the IPR proceedings. So there is actually a large number of patents at issue  
24 between the two parties but part of that has actually been opened up again. I  
25 think on the 034 patent which was not instituted and that's currently  
26 undergoing summary judgment briefing. I think the defendant's summary

1 judgment brief was filed recently and I think Rovi is getting ready to  
2 respond to that but that's the only patent that has been brought back  
3 primarily because the PTAB denied institution on that patent.

4 JUDGE BISK: Thank you.

5 MR. MEECE: So starting here with the broadest reasonable  
6 interpretation, despite presumption of validity, and the ITC found the claims  
7 to be invalid based on clear and convincing evidence. Go to slide four.

8 And as you will see, Rovi's arguments in this case are really a house  
9 of cards premised on a narrow claim construction, more narrow than *Phillips*  
10 that is incorrect as a matter of law. Based on the correct broadest reasonable  
11 interpretation, all of Rovi's arguments fail.

12 Slide seven please. According to the Federal Circuit, we know from  
13 the *Facebook* decision that the broadest reasonable interpretation of a claim  
14 may be the same as or broader than the construction of the term under the  
15 *Phillips* standard but it absolutely cannot be more narrow.

16 Slide A. And I think the easiest way to illustrate this is just with a  
17 Venn diagram. On the left we have the broadest reasonable interpretation  
18 being greater than the scope of *Phillips*. On the right we have the BRI the  
19 same as the ITC *Phillips* construction. And under *Facebook*, either of these  
20 is correct.

21 If we can go to slide 20. And here we will demonstrate that Comcast's  
22 claimed construction complies with the Federal Circuit law because our BRI  
23 is the same as the ITC's construction under *Phillips*.

24 In contrast, if you can go to slide 21, we see that Rovi's construction  
25 actually has the scopes reversed. This is the opposite of what the Federal  
26 Circuit requires under *Facebook* that both the BRI has to be at least as broad

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