

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 IPR2017-00866  
Patent 8,713,595 B2

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Before KARL D. EASTHOM, BARBARA A. BENOIT, and  
STACY B. MARGOLIES, *Administrative Patent Judges*.

MARGOLIES, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

## I. INTRODUCTION

In this *inter partes* review, instituted pursuant to 35 U.S.C. § 314, Comcast Cable Communications, LLC (“Petitioner”) challenges the patentability of claims 1–24 of U.S. Patent No. 8,713,595 B2 (Ex. 1001, “the ’595 patent”), owned by Rovi Guides, Inc. (“Patent Owner”). We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, Petitioner has shown by a preponderance of the evidence that claims 1–24 of the ’595 patent are unpatentable.

### A. Procedural History

Petitioner filed a Petition for *inter partes* review of claims 1–24 of the ’595 patent. Paper 2 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). On August 28, 2017, we instituted an *inter partes* review of claims 1–24 of the ’595 patent on the following grounds: (i) claims 1–6, 9–14, and 17–22 are unpatentable under 35 U.S.C. § 103(a)<sup>1</sup> as obvious over Lett<sup>2</sup> and Granger<sup>3</sup>; (ii) claims 7, 8, 15, 16, 23, and 24 of the ’595 patent are unpatentable under 35 U.S.C. § 103(a) as obvious over Lett,

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<sup>1</sup> The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. § 103. Because the ’595 patent has an effective filing date before the effective date of the applicable AIA amendments, we refer to the pre-AIA version of 35 U.S.C. § 103.

<sup>2</sup> U.S. Patent No. 5,592,551, filed Apr. 19, 1994, issued Jan. 7, 1997 (Ex. 1008).

<sup>3</sup> U.S. Patent No. 5,483,277, filed Dec. 15, 1992, issued Jan. 9, 1996 (Ex. 1009).

IPR2017-00866  
Patent 8,713,595 B2

Granger, and Young '121<sup>4</sup>; and (iii) claims 1–24 of the '595 patent are unpatentable under 35 U.S.C. § 103(a) as obvious over Strubbe<sup>5</sup> and Lett. Paper 10 (“Inst. Dec.”), 38–39.

Subsequent to institution, Patent Owner filed a Patent Owner Response (Paper 21, “PO Resp.”), to which Petitioner filed a Reply (Paper 27, “Reply”). Petitioner relies on the Declaration of Dr. Vernon Thomas Rhyne, III (Ex. 1014) and the Second Declaration of Vernon Thomas Rhyne, Ph.D. (Ex. 1020). Patent Owner relies on the Declaration of Michael Shamos, Ph.D. (Ex. 2009).

An oral hearing was held on June 6, 2018, and a transcript of the hearing has been entered into the record. Paper 34 (“Tr.”).

#### *B. Related Matters*

The parties identify the following pending matters, which may affect, or be affected by, a decision in this proceeding: (1) *Rovi Guides, Inc. v. Comcast Corporation*, 1:16-cv-09278 (S.D.N.Y.); and (2) *Comcast Corporation v. Rovi Corporation*, 1:16-cv-03852 (S.D.N.Y.). Pet. 1–2; Paper 4, 1; *see* 37 C.F.R. § 42.8(b)(2). Claims 1–24 of the '595 patent also are at issue in IPR2017-00867, for which a final written decision is being issued concurrently with this Decision.

#### *C. The '595 Patent*

The '595 patent is titled “Interactive Program Guide Systems and Processes.” Ex. 1001, [54]. The '595 patent is directed to an interactive program guide system that can automatically tune a television or program a

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<sup>4</sup> U.S. Patent No. 4,706,121, issued Nov. 10, 1987 (Ex. 1010).

<sup>5</sup> U.S. Patent No. 5,047,867, issued Sept. 10, 1991 (Ex. 1012).

video cassette recorder (VCR) based on program selections made from program schedule information displayed on a video monitor. *Id.* at 1:18–23. The '595 patent describes as background that “[o]ver the past several years, television viewers have grown accustomed to a scrolling television program guide”—such as the Prevue Channel—which, according to the '595 patent, “is not an interactive program guide, and therefore, it lacks certain capabilities that viewers would find very useful.” *Id.* at 1:62–2:1, 2:16–19. For example, the '595 patent states that, with such a guide, “the viewer cannot directly use the scrolling grid for tuning a television to a desired channel or programming a VCR.” *Id.* at 2:26–28. The '595 patent notes that “[a]ttempts have been made to provide interactive program guides with such capabilities” and that one such system is described in Young '121—one of the prior art references relied on in this proceeding. *Id.* at 2:29–32. The '595 patent states that a disadvantage of the system described in Young '121 is that, when user program selection criteria are activated such that only programs meeting the criteria are displayed in the grid, “the viewer is unable to select for viewing or recording any program that does not meet the selection criteria because such programs would not be listed.” *Id.* at 2:32–41. The '595 patent adds that, with the Young '121 system, to select an unlisted program (because it does not meet a viewer’s criteria), the viewer must either “deactivate the selection criteria” or provide different selection criteria to capture the program of interest. *Id.* at 2:42–45.

The '595 patent discloses that, “[i]n accordance with [the] invention, interactive program guide systems and related processes are provided which can automatically tune a television, or program a VCR, based on program selections made from program schedule information displayed on a

television or other suitable television monitor.” *Id.* at 4:10–14. The patent states that “[t]he interactive program guide is implemented preferably using a microprocessor-controlled set-top box that is coupled to the viewer’s television set.” *Id.* at 4:14–17.

Figure 2 of the patent, below, illustrates the set-top box.

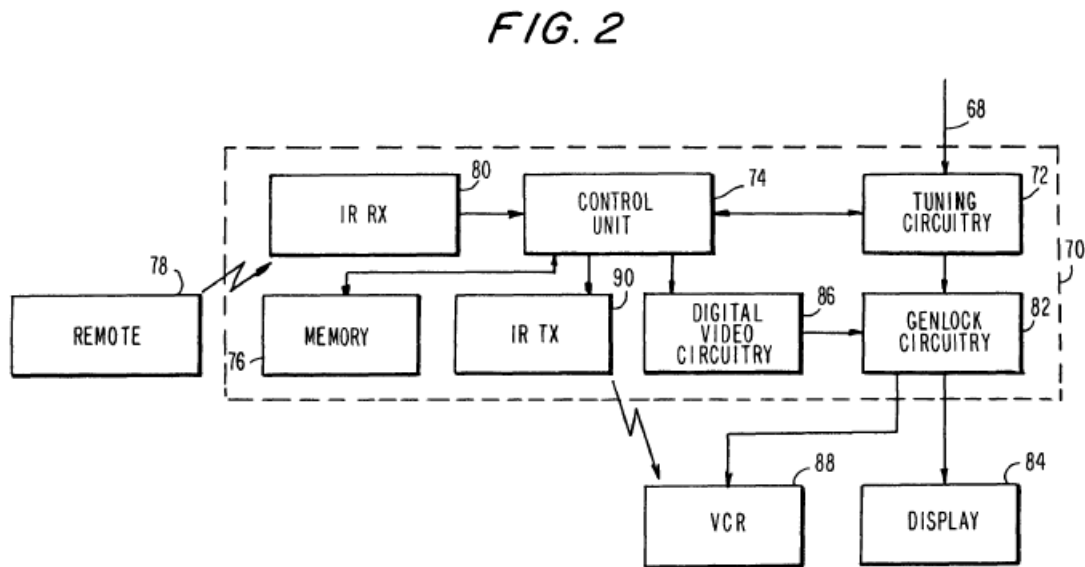


Figure 2 above illustrates “a set-top box 70 suitable for implementing the interactive program guide of the present invention.” *Id.* at 7:15–17. According to the ’595 patent, television signals and program schedule information transmitted on cable network 68 are received by tuning circuitry 72 of set-top box 70. *Id.* at 7:17–20. The ’595 patent discloses that tuning circuitry 72 processes the incoming signals in a conventional manner to extract the program schedule information (*id.* at 7:20–23) and “also tunes the set-top box 70 to a program channel selected by the viewer” (*id.* at 7:37–40). The ’595 patent discloses that when a user invokes the interactive program

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