

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

ROVI GUIDES, INC.,
Patent Owner.

Case IPR2017-00939
Patent 9,172,987 B2

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

BENOIT, *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 1–16 (“the challenged claims”) of U.S. Patent No. 9,172,987 B2 (Ex. 1001, “the ’987 patent,” “the challenged patent,” or “Lemmons”), 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 reasons discussed herein, Petitioner has shown by a preponderance of the evidence that claims 1–16 of the ’987 patent are unpatentable.

A. Procedural History

Petitioner filed two petitions requesting for *inter partes* review of the challenged claims of the ’987 patent. IPR2017-00939 Paper 2 (“Pet.”); IPR2017-00941, Paper 2. Patent Owner filed a Preliminary Response in this proceeding. Paper 7. On September 11, 2017, after considering the information presented in the Petition and the Preliminary Response, we instituted an *inter partes* review of the challenged claims on all grounds asserted by Petitioner. Paper 11 (“Institution Decision” or “Dec.”). After institution, Patent Owner filed a Patent Owner Response, Paper 18 (“PO Resp.”), and Petitioner filed a Reply to the Patent Owner Response, Paper 21 (“Reply”). A consolidated hearing for this proceeding and certain issues of IPR2017-00941 was held on June 6, 2018. A transcript of the consolidated hearing has been entered into the record.¹ Paper 31 (“Tr.”).

¹ Patent Owner objects to two of Petitioner’s demonstrative slides as impermissibly presenting new arguments. Paper 30. We have not relied on the objected-to slides in this decision and dismiss those objections as moot.

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 Corp.*, 1:16-cv-09278 (S.D.N.Y.) (“the -09278 S.D.N.Y. action”) and (2) *Comcast Corp. v. Rovi Corp.*, 1:16-cv-03852 (S.D.N.Y.). Pet. 2; Paper 5, 1; *see* 37 C.F.R. § 42.8(b)(2). Claims 1–16 of the ’987 patent also are at issue in IPR2017-00941, which was filed the same day as the Petition in this proceeding (March 1, 2017). Paper 4 (Notice of Filing Date Accorded); IPR2017-00941 Paper 4 (Notice of Filing Date Accorded to IPR2017-00941). An *inter partes* review was instituted in that proceeding as well. This Decision is issued concurrently with a Final Written Decision in IPR2017-00941. The parties also identify a pending application that claims, among others, the benefit of the filing date of the application resulting in the challenged patent. Pet. 2; Paper 5, 2–3.

C. The ’987 Patent

The ’987 patent is titled “Methods and Systems for Updating Functionality of a Set-top Box Using Markup Language.” Ex. 1001, [54]. The patent describes techniques that relate to “interactive television program guide systems which provide for the flexible modification of program guide user screen layouts and program guide functionality.” *Id.* at 1:22–25.

1. The Written Description

The ’987 patent describes as background that cable, satellite, and broadcast television systems provide viewers with a large number of television channels and that electronic television program guides allow television program information to be displayed on a user’s television. *Id.* at 1:26–33 (Background of the Invention). Such guides allow a viewer to

navigate through television program listings using a remote control. *Id.* at 1:34–35 (Background of the Invention). One problem with such program guides is that “user screens (e.g., screens containing program listings) and program guide functionality” cannot be changed “without downloading an entire new program guide application.” *Id.* at 1:40–44 (Background of the Invention).

The challenged patent indicates that “it would be desirable if a markup language could be used to provide for the downloading display characteristics of user screens and program guide functionality as plug-ins anytime, without modifying the code of the application.” *Id.* at 1:45–49. Accordingly, “an object of the present invention [is] to provide an interactive television program guide that arranges program guide display elements using a markup language.” *Id.* at 1:50–52. The patent also identifies another object of the invention as “to provide an interactive television program guide that may be updated by downloading markup language documents without user intervention.” *Id.* at 1:56–59. To address these issues, the ’987 patent describes “provid[ing] an interactive program guide system that has program guide display screen look and functionality assigned updated [sic] using markup language documents.” *Id.* at 1:63–67.

Figure 1 of the ’987 patent, below, illustrates a system that distributes program guide data to a program guide on user television equipment. *Id.* at 4:8–12; *see id.* at 3:14–15 (indicating the system illustrated in Figure 1 is “in accordance with the present invention”).

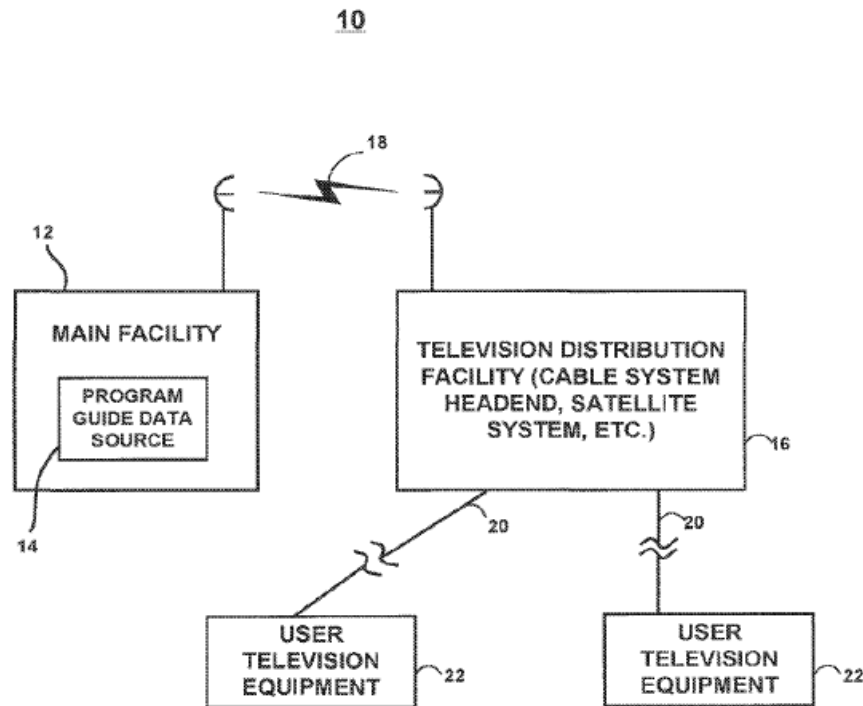


FIG. 1

As illustrated in Figure 1 above, system 10 shows “[m]ain facility 12 provid[ing] data from program guide data source 14 to television distribution facility 16 via communications link 18.” *Id.* at 3:15–17. Television distribution facility 16, for example, may be a cable system headend, a broadcast distribution facility, or a satellite television distribution facility. *Id.* at 3:26–29. Television distribution facility 16 receives and further distributes to user television equipment 22 television program listings, additional data (such as weather information, “associated Internet web links,” and computer software), and markup language documents “for updating the display screen layouts and functionality of a program guide without user intervention.” *Id.* at 3:30–41. Examples of markup language documents are “Hypertext Markup Language (HTML), Dynamic HyperText

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