

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 IPR2017-00941  
Patent 9,172,987 B2

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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. 1101, “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 *not* 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. IPR2017-00941, Paper 2 (“Pet.”); IPR2017-00939, Paper 2. Patent Owner filed a Preliminary Response in this proceeding. Paper 7.

On September 11, 2017, we instituted an *inter partes* review on challenged claims 1–3, 8–10, and 16 on the following asserted grounds: (i) claims 1–3, 8–10, and 16 of the ’987 patent on the ground of obviousness over Kamada<sup>1</sup> and Pedrizetti<sup>2</sup> and (ii) claims 1–3, 8–10, and 16 of the ’987 patent on the ground of obviousness over Kamada and Wang.<sup>3</sup> Paper 11 (“Dec.”), 39. After institution, Patent Owner filed a Patent Owner Response (Paper 18; “PO Resp.”), to which Petitioner filed a Reply (Paper 23, “Reply”). On June 6, 2018, a consolidated hearing for IPR2017-00939 and

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<sup>1</sup> U.S. Patent No. 6,772,394 B1 (Ex. 1108).

<sup>2</sup> U.S. Patent No. 6,151,708 (Ex. 1111).

<sup>3</sup> U.S. Patent No. 6,675,385 B1 (Ex. 1109).

this proceeding for issues related to the grounds instituted on September 11, 2017.<sup>4</sup> Paper 54 (“Tr.”).

On May 2, 2018,<sup>5</sup> we issued an order modifying our Institution Decision to include two additional grounds, consistent with *Guidance on the Implication of SAS on AIA Trial Proceedings*.<sup>6</sup> Paper 32, 2–3; see *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348 (2018). Specifically, we modified our Institution Decision to include the asserted grounds that (i) the subject matter of claims 1–5, 7–13, 15, and 16 would have been obvious over Gerba<sup>7</sup> and Straub<sup>8</sup> and (ii) the subject matter of claims 6 and 14 would have been obvious over Gerba, Straub, and Davis.<sup>9</sup>

On May 24, 2018, we issued an order modifying our institution decision to include (i) Petitioner’s challenge that the subject matter of dependent claim 11 would have been obvious over Kamada and Pedrizetti (Pet. 31–32) and (ii) Petitioner’s challenge that the subject matter of dependent claims 5–7, 11, and 13–15 would have been obvious over Kamada and Wang (Pet. 40–52). Paper 38.

Patent Owner filed a Supplemental Patent Owner Response (Paper 61; “Supp. PO Resp.”), to which Petitioner filed a Supplemental Reply

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<sup>4</sup> Patent Owner objects to two of Petitioner’s demonstrative slides as impermissibly presenting new arguments. Paper 44. We have not relied on the objected-to slides filed in advance of the June 6, 2018 hearing in this decision and dismiss those objections as moot.

<sup>5</sup> Paper 32, as reflected by PTAB E2E filing date, was entered on May 2, 2018. The date of May 5, 2018 on the paper itself is an error.

<sup>6</sup> Available on line at <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial>.

<sup>7</sup> U.S. Patent No. 6,445,398 B1 (Ex. 1104).

<sup>8</sup> U.S. Patent No. 5,905,492 (Ex. 1103).

<sup>9</sup> U.S. Patent No. 5,822,123 (Ex. 1102).

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(Paper 55, “Supp. Reply”). In addition, Patent Owner filed a Motion to Exclude (Paper 60, “Mot.”), to which Petitioner filed an Opposition (Paper 63, “Opp.”). In turn, Patent Owner filed a Reply to Patent Owner’s opposition. In addition, Patent Owner filed observations on supplemental cross-examination (Paper 59), to which Petitioner filed a response (Paper 65). An oral argument for these challenges was held on August 23, 2018. Paper 69 (“Supp. 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 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 IPR2017-00939, which was filed the same day as the Petition in this proceeding (March 1, 2017). Paper 4 (Notice of Filing Date Accorded); IPR2017-00939 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 IPR2017-00939. 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. 1101, [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

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