

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 IPR2017-01048
U.S. Patent No. 8,578,413

**PATENT OWNER'S REQUEST FOR REHEARING
BY THE DIRECTOR PURSUANT TO *UNITED STATES v. ARTHREX***

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U.S. Patent and Trademark Office
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I. INTRODUCTION

Patent Owner Rovi Guides, Inc. (PO) requests Director review of the PTAB's October 16, 2018 Final Written Decision (Pap. 36). This request is timely filed within 30 days of the Federal Circuit's September 2, 2021 remand order.

The Board's conclusion that an ordinary artisan would have been motivated to combine Humpleman and Killian was erroneous. At the outset of this proceeding, the Board misapplied the law by analyzing obviousness based on what a POSA *could* do rather than what a POSA *would have been able and motivated to do*. Then, in its final decision on obviousness, the Board—without justification—disregarded unambiguous language in Humpleman that criticizes systems like Killian. This language would have discouraged a POSA from combining Humpleman and Killian in the manner claimed. Because controlling precedent dictates that obviousness cannot be based on a combination of references that teach away from one another, the Board's finding that the '413 patent is obvious over Humpleman and Killian should be set aside.

II. BACKGROUND

A. The patent. The '413 patent claims a novel system and method for allowing a user to remotely control a program guide for her television. The invention improved upon prior art program guide systems, which “require[d] that the user be physically present in the home to access important program guide features such as

program reminders, parental control, and program recording.” EX1001, 2:16–19.

The patent discloses a system in which two distinct “interactive program guides”—a “local IPG” and a “remote IPG” (or “remote access IPG”)—communicate with one another. The local IPG is implemented on “local interactive television program guide equipment,” while the remote IPG is implemented on a “mobile device.” *Id.*, 40:6–47. These guides offer robust, interactive features that allow users to control television activity remotely in ways previously unavailable. For example, the user can instruct the remote IPG to schedule future recordings, access information about program listings, schedule a program reminder, or display program listings in subsets according to user-selected criteria. The remote IPG then sends those instructions to the local IPG, which performs the necessary operations on the local IPG equipment. *Id.*, 15:9–31, 18:4–12, 25:45–59, 40:6–47.

B. The prior art. Humpleman discloses a system that allows a user to control various “home devices” connected to a home network. EX1006, 1:21–36, 2:15–18. These “home devices” include “all electronic devices...typically found in the home,” like “security systems, theatre equipment (e.g., TVs, VCRs, stereo equipment, and...digital satellite services (DSS)), ... and washers/dryers.” *Id.*, 1:2131.

The Humpleman system, according to its specification, “eliminates a requirement for a remote control device to include...control codes specific to each of

the devices on the network.” *Id.*, 23:4649. Humpleman disparagingly characterizes this as “static control and command logic.” *Id.*, 1:5258. As the Humpleman provisional application says, under the static-control-and-command-logic approach, the user must “control everything,” which requires a “complex GUI” with a “detailed command set for every device.” EX1007, 16. Suitable home devices in Humpleman contain HTML data that is sent to a browser-equipped user device, which can be used to control that device. EX1006, 4:1419. “As long as each device on the network has HTML files to describe their [graphical user interface] and as long as they use HTTP protocol to transfer those files, then any ‘client’ device that understands how to ‘web-browse’ and render HTML will be able to use the device with the human-interface GUI.” EX1007, 1.

Killian discloses a single JAVA-based electronic program guide that “operates on a computing platform that is associated with a television.” EX1008, 2:13, 3:27–33. Petitioner relies on Killian to the extent it discloses “interactive program guide features.” FWD, 43. In Killian’s system, the electronic program guide (EPG) is programmed to control a *specific device* through JAVA-based applets that provide a collection of application programming interfaces specific to that device. EX1008, 3:19–27. Killian’s EPG thus uses the very “static control and command logic” that Humpleman disparages. EX1006, 1:52-58.

C. The Board found all claims obvious over Humpleman and Killian.

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