

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.
Petitioner

v.

OPENTV, INC
Patent Owner

Case IPR2014-00274
Patent 6,018,768

Before SALLY C. MEDLEY, JAMES T. MOORE, and JUSTIN BUSCH,
Administrative Patent Judges.

MOORE, *Administrative Patent Judge*

DECISION ON REHEARING
37 C.F.R. § 42.71(c)

I. INTRODUCTION

Petitioner, Netflix, Inc., filed a Petition requesting an *inter partes* review of claims 1-20 of U.S. Patent No. 6,018,768 (Ex. 1001, “the ’768 Patent”). Paper 1 (“Pet.”). Patent Owner, OpenTV, Inc., filed a Patent Owner Preliminary Response. Paper 10 (“Prelim. Resp.”). We entered a decision denying *inter partes* review on June 30, 2014. Paper 12. Petitioner filed a Request for Rehearing on July 30, 2014. Paper 13 (“Reh’g. Req.”).

The standard for requesting rehearing is set forth in 37 CFR § 41.71(c):

A party dissatisfied with a decision may file a request for rehearing. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply...

We grant the request to reconsider the decision insofar as we have reconsidered the decision, but decline to modify our previous decision.

II. THE REHEARING REQUEST

A. Claim Construction

The Petitioner argues that the Board erred in its claim construction. Reh’g. Req. 2-6.

The Petitioner provided their initial claim construction in the petition, pages 6-9. The Petitioner’s claim construction section in the petition did not specifically address the recitation in claim 1 that “the browser retrieves the requested Internet information segments under the direction and control of the controller means.”

The Petitioner's analysis equated this requirement to a web browser being "under the control of the microprocessor." Pet. 17, 34. As for the controller means, the Petitioner said only that its function was to "interpret the uniform resource locators" and its structure was "hardware or software." Pet. 8, 34.

We determined in our initial Decision, at page 11, that "the showing fails to provide sufficient persuasive evidence that Throckmorton's browser retrieves the requested Internet segments under the direction and control of the controller means." Decision 11.

Petitioner now urges that we take into consideration the '768 Patent specification which describes another embodiment where it states that the user can drive the presentation of a web page from a URL. Reh'g Req. 3.

Another section on the screen is also preferably used to represent an operational control panel. This control panel provides a list of the URLs that have been broadcast and correspondingly received by the computer 16. This control panel is updated to add a URL code each time a new URL code is received by the PC 16. This list gives the subscriber the flexibility to go back and retrieve particularly informative or interesting Web pages that have already been displayed earlier in the program, or alternatively, to print them out for future reference. Furthermore, the list could include URLs referring to Web pages not displayed with the broadcast program, but that provide further information on a certain topic of interest to the viewer.

Reh'g. Req. 3-4 citing Ex. 1001, col. 8:27-40.

Petitioner would now have us read the controller means language in claims 1, 4, and 19 to include this "control panel" which may be operated by the user in an alternative embodiment, stating that we overlooked the second

embodiment. Reh’g. Req. 4.

This argument does not persuade us to alter our earlier decision.

The newly proposed interpretation is inconsistent with the plain language of claim 1 reciting that the “browser retrieves the requested Internet information segments under the direction and control of the controller means.” Ex. 1001, col. 13:60-63. An embodiment allowing a user the flexibility to go back to access a list of URLs at the user’s leisure after the presentation does not alter the requirement that the controller means drives the presentation during the audio or video program.

Next, the Petitioner argues that independent claims 1, 4, 12, and 19 each must encompass that the display means can present “video and audio signals concurrently with or independently from the Internet information segments.”¹ Reh’g. Req. 5-6. We agree with this portion of the Petitioner’s argument.

However, we disagree with the next logical leap, where the Petitioner urges that the display means limitation broadens the claim language to encompass the second embodiment identified by the Petitioner where the user may select a URL to direct the retrieval of a web page in the absence of video and audio. Reh’g. Req. 5.

The petitioner specifically urges that:

Because each independent claim encompasses presenting web pages

¹ Claim 5, which depends from claim 4 and thus must be encompassed by claim 4, recites “[t]he system of claim 4 further comprising a display means, connected to the controller and receiver, for presenting the video concurrently with or independently from the Internet information segments.” Ex. 1001, col. 14: 31-34.

independent from the audio and video signals, and the support in the specification for presenting audio and video signals independent from web pages is the embodiment where the presentation of web pages are user-driven, the broadest reasonable construction of the claims must include the embodiment where presentation of a web page is user-driven. Accordingly, the construction adopted in the Decision that excludes user-driven presentation of web pages is not the broadest reasonable interpretation in light of the claims and should be reconsidered.

Id. at 6.

The display means limitation does not remove the requirement from claims 1, 4, 12, or the other independent claims¹⁹, that the controller means direct and control the retrieval of the Internet information segments.

The Petitioner reads the claim language in a strained manner to achieve their interpretation. The display means can display the video and audio independently from the internet information segment. How the information is received is not governed by this claim element.

Thus, we find that the evidence of record supports the interpretation of the claim limitation that the “browser retrieves the requested Internet information segments under the direction and control of the controller means” as requiring the controller means to drive the program presentation by the URLs received.

The recitation of the display means limitation in claims 1, 5, 12, and 19 is not inconsistent with this interpretation.

B. Throckmorton

Petitioner urges, even under the Board’s claim interpretation, that Throckmorton’s Figure 5 discloses the ability to retrieve a web page under the direction and control of a controller means. Reh’g Req. 8.

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