

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC. and ROKU INC.,
Petitioner,

v.

CONVERGENT MEDIA SOLUTIONS LLC,
Patent Owner.

Case IPR2016-01761
Patent 8,850,507 B2

Before JAMESON LEE, KEN B. BARRETT, and JOHN F. HORVATH,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background and Summary

On September 8, 2016, Netflix, Inc. and Roku, Inc. (collectively, “Petitioner”) filed a Petition (Paper 2, “Pet.”) to institute *inter partes* review of claims 1–18 of U.S. Patent No. 8,850,507 B2 (Ex. 1001, “the ’507

patent”). Convergent Media Solutions, LLC (“Patent Owner”), did not file a preliminary response. To institute an *inter partes* review, we must determine that the information presented in the Petition shows “that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Having considered the arguments and evidence presented by Petitioner, and in the absence of a preliminary response from Patent Owner, we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail in establishing the unpatentability of each of claims 1–17 of the ’507 patent. Petitioner has not, however, shown a reasonable likelihood that it would prevail in establishing the unpatentability of claim 18 of the ’507 patent.

B. Related Matters

Petitioner indicates that the ’507 patent was asserted by Patent Owner against Petitioner in *Convergent Media Solutions, LLC v. Netflix, Inc.*, No. 3:15-cv-02160-M (N.D. Tex.) and *Convergent Media Solutions, LLC v. Roku, Inc.*, No. 3:15-cv-02163-M (N.D. Tex.), respectively. Pet. 2. Petitioner indicates that Patent Owner has asserted related U.S. Patent No. 8,893,212 B2 against Roku, Inc., and related patents U.S. Patent Nos. 8,527,640 B2, 8,640,183 B2, and 8,689,273 B2 against Netflix, Inc. *Id.* Patent Owner additionally identifies this related action: *Convergent Media Solutions, LLC v. AT&T, Inc. et al.*, No. 3:15-cv-02156 (N.D. Tex.). Paper 4, 2.

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The related patents are involved in these *inter partes* review proceedings: IPR2016-01762 (U.S. Patent No. 8,893,212 B2); IPR2016-01811 (U.S. Patent No. 8,527,640 B2); IPR2016-00047 (U.S. Patent No. 8,640,183 B2); IPR2016-01812 (U.S. Patent No. 8,640,183 B2); IPR2016-01813 (U.S. Patent No. 8,689,273 B2); and IPR2016-01814 (U.S. Patent No. 8,914,840 B2).

C. The '507 Patent

The '507 patent states, in a section captioned as "SUMMARY OF VARIOUS EMBODIMENTS [OF] THE INVENTION":

According to embodiments of the present invention there are provided systems and methods for navigating hypermedia using multiple coordinated input/output device sets. Embodiments of the invention *allow a user and/or an author to control what resources are presented on which device sets* (whether they are integrated or not), and provide for coordinating browsing activities to enable such a user interface to be employed across multiple independent systems. Embodiments of the invention support new and enriched aspects and applications of hypermedia browsing and related business activities.

Ex. 1001, 3:4–14 (emphasis added). The device sets may include laptops, desktops, tablets, personal digital assistants (PDAs), televisions (TVs), set-top boxes, video cassette recorders (VCRs), and digital video recorders (DVRs). *Id.* at 16:28–43, 18:32–59, 19:32–47. The term hypermedia refers to "any kind of media that may have the effect of a non-linear structure of associated elements," and includes "graphics, video, and sound." *Id.* at 7:4–15. The '507 patent characterizes audio and video as examples of "continuous media" which refers to any "representation of 'content' elements that have an intrinsic duration, that continue (or extend) and may change over time." *Id.* at 19:65–20:6.

The multiple input/output device sets described in the '507 patent may be coordinated using “a device set management process that performs basic setup and update functions” to “pre-identify and dynamically discover device sets that may be used in coordination with any given system.” Ex. 1001, 37:28–35. This management process can “be based on and compatible with related lower-level processes and standards defined for linking such existing devices and systems . . . based on UPnP, HAVi, OSGi, Rendezvous and/or the like.” *Id.* at 37:38–42. The process enables basic communications among the devices in the device set, and “provide[s] discovery, presence, registration, and naming services to recognize and identify devices as they become available to participate in a network, and to characterize their capabilities.” *Id.* at 37:42–47.

Claim 1 is the only independent claim of all challenged claims, and is reproduced below (bracketed lettering inserted for identification purposes):

1. A method for use in a second computerized device set which is configured for wireless communication using a wireless communications protocol that enables wireless communication with a first computerized device set, wherein the first computerized device set includes a continuous media player, the method comprising:
 - [a] receiving discovery information that is obtained in accordance with a device management discovery protocol that is implemented at a communication layer above an internet protocol layer, wherein the discovery information allows a determination to be made at the second computerized device set that the first computerized device set is capable of receiving an indication of a particular control function related to a parameter of a presentation of a continuous media content on the first computerized device set, wherein the continuous media content includes video data;

- [b] making available to a user a first user interface that allows the user to select to direct communications to the first computerized device set;
- [c] making available to the user a second user interface that allows the user to select the particular control function related to a parameter of a presentation of the continuous media content; and,
- [d] causing to be wirelessly transmitted, in accordance with a wireless local area network protocol, the indication of the particular control function selected by the user via the second user interface to the first computerized device set for subsequent use by the continuous media player to control the presentation of the continuous media content on the first computerized device set.

Ex. 1001, 165:2–33.

D. Evidence Relied Upon

Petitioner relies on the following references:¹

| | Reference | Date | Exhibit |
|-----------------------|------------------------------|---|----------------|
| Zintel | U.S. Patent No. 6,910,068 B2 | issued June 21, 2005; filed Mar. 16, 2001 | Ex. 1003 |
| Elabbady ² | U.S. Patent No. 7,483,958 B1 | issued Jan. 27, 2009; filed Mar. 26, 2002 | Ex. 1004 |
| Janik | U.S. Patent No. 7,130,616 B2 | issued Oct. 31, 2006; filed Aug. 7, 2001 | Ex. 1007 |

¹ The earliest possible effective filing date of the '507 patent, potentially establishable by Patent Owner, is May 10, 2002. Ex. 1001, (60) (63).

² Elabbady claims benefit to U.S. Provisional Application 60/278,804, filed March 26, 2001 (“Elabbady Provisional”). Petitioner does not need to have the March 26, 2001 date as the reference date for Elabbady unless Patent Owner has successfully antedated the actual filing date of Elabbady.

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