

Filed on behalf of Petitioner

By: Elisabeth H. Hunt  
Richard F. Giunta  
Randy J. Pritzker  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Boston, MA 02210  
Tel: (617) 646-8000  
Fax: (617) 646-8646  
EHunt-PTAB@wolfgreenfield.com

Paper No. \_\_

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

RPX Corporation,  
Petitioner,

v.

Digital Audio Encoding Systems, LLC  
Patent Owner.

---

Case No. TBD  
Patent No. 7,490,037

---

**PETITION FOR INTER PARTES REVIEW**  
**UNDER 35 U.S.C. §§ 311-319 AND 37 C.F.R. § 42.1 et seq**

## TABLE OF CONTENTS

MANDATORY NOTICES.....	viii
REAL PARTY-IN-INTEREST .....	viii
RELATED MATTERS.....	viii
COUNSEL AND SERVICE INFORMATION - § 42.8(B)(3) AND (4).....	x
I. INTRODUCTION .....	1
II. NOTICE OF FEES PAID .....	1
III. CERTIFICATION OF GROUNDS FOR STANDING .....	1
IV. IDENTIFICATION OF CHALLENGE AND RELIEF REQUESTED .....	1
V. TECHNOLOGY OVERVIEW .....	3
VI. THE ‘037 PATENT .....	5
VII. LEVEL OF ORDINARY SKILL IN THE ART .....	6
VIII. CLAIM INTERPRETATION.....	7
A. “signal” .....	7
B. “test signal” .....	7
C. “test signal generator” .....	7
IX. THRESHOLD REQUIREMENT FOR <i>INTER PARTES</i> REVIEW .....	8
X. CLAIM-BY-CLAIM EXPLANATION OF GROUNDS FOR UNPATENTABILITY .....	8
A. The ‘037 Patent Is Not Entitled to Its Priority Claim.....	10
B. Ferriere Discloses All Limitations of Independent Claims 1 and 17 from Which the Challenged Claims Depend.....	11
C. Independent Claims 1 and 17, from Which the Challenged Claims Depend, Would Have Been Obvious over Ferriere.....	20
D. <u>Ground 1</u> : Claims 5 and 6 Would Have Been Obvious over Ferriere in View of Kalra .....	21
E. <u>Ground 2</u> : Claims 8, 23, 26, and 30 Would Have Been Obvious over Ferriere in View of Schulzrinne .....	25
i. Schulzrinne Is Printed Publication Prior Art.....	25

a.	Schulzrinne’s Cataloging and Dissemination Under the Department’s Standard Practices Establish It as Prior Art Under 35 U.S.C. §102(b) .....	27
b.	Schulzrinne’s Inclusion in the NCSTRL Electronic Library Independently Establishes It as Prior Art Under 35 U.S.C. §102(a).....	29
c.	Pre-1997 Journal Citations Provide Independent Evidence of Schulzrinne’s Prior Art Publication Under 35 U.S.C. §§ 102(a) and 102(b).....	30
ii.	Schulzrinne and Ferriere Render Claims 8, 23, 26, and 30 Obvious.....	31
F.	<u>Ground 3</u> : Claim 22 Would Have Been Obvious over Ferriere in View of Hluchyj .....	37
G.	<u>Ground 4</u> : Claim 27 Would Have Been Obvious over Ferriere in View of Riddle.....	40
H.	<u>Ground 5</u> : Claims 28 and 30 Would Have Been Obvious over Ferriere in View of Barraclough.....	42
I.	<u>Grounds 6-9</u> : Claims 5-6, 8, 23, 26-28, and 30 Would Have Been Obvious over Ferriere and Kudo in Combination with Other References .....	46
XI.	CONCLUSION .....	52

**TABLE OF AUTHORITIES**

**CASES**

*Garrett Corp. V. United States*,  
422 F.2d 874 (Ct. Cl. 1970).....28

*Hamilton Labs v. Massengill*,  
111 F.2d 584 (6<sup>th</sup> Cir. 1940) .....28

*In re Hall*,  
781 F.2d 897(Fed. Cir. 1986) ..... 26, 28

*Lucent Techs., Inc. v. Gateway, Inc.*,  
No. CIV 02CV2060-B CAB, 2007 WL 1877984 (S.D. Cal. June 27, 2007) .....28

*Massachusetts Inst. of Tech. v. AB Fortia*,  
774 F.2d 1104 (Fed. Cir. 1985) .....28

*Trivascular, Inc. v. Samuels*,  
812 F.3d 1056 (Fed. Cir. 2016) .....7

*Voter Verified, Inc. v. Premier Election Sols., Inc.*,  
698 F.3d 1374 (Fed. Cir. 2012) .....30

**STATUTES**

35 U.S.C. §102(a) ..... 26, 29, 30, 42

35 U.S.C. §102(b) ..... 11, 22, 26

35 U.S.C. §102(e) ..... passim

35 U.S.C. §103(a) .....1, 2

35 U.S.C. §120 .....11

35 U.S.C. §133 .....11

35 U.S.C. §311 .....52

35 U.S.C. §314(a) .....8

**OTHER AUTHORITIES**

MPEP §711.04(a).....11

**REGULATIONS**

37 C.F.R. §42.100(b) .....7

37 C.F.R. §42.101 .....52

37 C.F.R. §42.104(a).....1

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.