

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

CONSTELLATION TECHNOLOGIES LLC,
Patent Owner.

Case IPR2014-00914
Patent 8,464,299 B1

Before MICHAEL R. ZECHER, TREVOR M. JEFFERSON, and
PETER P. CHEN, *Administrative Patent Judges*.

ZECHER, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner, Cisco Systems, Inc. (“Cisco”), filed a corrected Petition (“Pet.”) requesting an *inter partes* review of claims 1–3, 6–15, and 18–22 of U.S. Patent No. 8,464,299 B1 (“the ’299 patent,” Ex. 1001). Paper 4. Patent Owner, Constellation Technologies LLC (“Constellation”), timely filed a Preliminary Response (“Prelim. Resp.”). Paper 9. We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides:

THRESHOLD.—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 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.

Taking into account the arguments presented in Constellation’s Preliminary Response, we conclude that the information presented in the Petition does not establish that there is a reasonable likelihood that Cisco will prevail in challenging claims 1–3, 6–15, and 18–22 of the ’299 patent as unpatentable under 35 U.S.C. §§ 102(e) and 103(a). We, therefore, do not authorize an *inter partes* review to be instituted for the ’299 patent.

A. *Related Matters*

The parties indicate that the ’299 patent was asserted in the following proceedings: (1) *ARRIS Group, Inc. v. Constellation Techs. LLC*, No. 1-14-cv-00114 (D. Del.); (2) *Charter Commc’ns., Inc. v. Rockstar Consortium US LP*, No. 1-14-cv-00055 (D. Del.); (3) *Constellation Techs. LLC v. Time*

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Warner Cable Inc., No. 2-13-cv-01079 (E.D. Tex.); (4) *Bockstar Techs. LLC v. Cisco Systems, Inc.*, No. 1-13-cv-02020 (D. Del.); and (5) *In Re: Constellation Techs. LLC Patent Litig.*, MDL No. 2558, United States Judicial Panel On Multidistrict Litigation. Pet. 2–3; Paper 8, 2. In addition to this Petition, Cisco filed five other Petitions challenging the patentability of a certain subset of claims in the following patents owned by Constellation: (1) U.S. Patent No. 6,845,389 B1 (IPR2014-00871 and IPR2014-01085); (2) U.S. Patent No. 8,134,917 B2 (IPR2014-00911); (3) U.S. Patent No. 6,901,048 B1 (IPR2014-01179); and (4) U.S. Patent No. 7,154,879 B1 (IPR2014-01180).

B. The '299 Patent

The '299 patent generally relates to controlling delivery of television content to conserve network resources based on whether the television content is being viewed. Ex. 1001, 1:12–15. According to the '299 patent, a significant waste of network resources occurs when television content is delivered to a television that is not being viewed. *Id.* at 1:40–42. For instance, it is commonplace for subscribers to leave their televisions on for long periods of time “when no one is home or watching the television.” *Id.* at 1:42–44. Subscribers also tend to leave their set top boxes on even when the television is off. *Id.* at 1:44–45.

The '299 patent purportedly solves this problem by using a television gateway to monitor a viewer's interactions to determine whether television content is being viewed at the associated television or to detect whether the television is on or off. Ex. 1001, 1:67–2:4. Upon determining that the

viewer is not viewing the television content, various actions can be taken to conserve network resources. *Id.* at 2:4–6. These conservation actions include, for example, providing instructions to the content provider to halt delivery of all or a portion of the television content, or providing the television content at a reduced quality level so as to reduce the bandwidth required to transport the television content through the packet network. *Id.* at 2:7–11. When a conservation action is taken, an alert may be provided for display on the television before, during, or after initiating the action so as to alert the viewer of the action. *Id.* at 2:14–17.

C. Illustrative Claim

Of the challenged claims, claims 1 and 19 are independent claims. Claims 2, 3, 6–15, and 18 directly or indirectly depend from independent claim 1. Claims 20–22 directly depend from independent claim 19. Independent claim 1 is illustrative of the challenged claims and is reproduced below:

1. A method for conserving resources associated with packet television services comprising:
 - receiving television content from a content provider over a packet network;
 - providing the television content to a television monitor for display to a viewer;
 - determining if a resource conserving process should be activated, wherein the resource conserving process determines if an action to conserve resources associated with transporting the television content over the packet network should be performed;
 - if the resource conserving process should be activated:

determining whether the viewer is watching the television monitor; and
initiating the action to conserve resources associated with transporting the television content over the packet network upon determining that the viewer is not watching the television monitor;
if the resource conserving process should not be activated:
continue providing the television content.

Ex. 1001, 8:9–30.

D. Prior Art Relied Upon

Cisco relies upon the following prior art references:

Minnick	US 2005/0157215 A1	July 21, 2005 (filed Sept. 13, 2004)	Ex. 1002
Riley	US 2005/0188415 A1	Aug. 25, 2005 (effectively filed Jan. 24, 2005) ¹	Ex. 1003
Harrell	US 2003/0067872 A1	Apr. 10, 2003	Ex. 1004

E. Asserted Grounds of Unpatentability

Cisco challenges claims 1–3, 6–15, and 18–22 of the '299 patent based on the asserted grounds of unpatentability set forth in the table below.
Pet. 4, 21–60.

Reference(s)	Basis	Challenged Claims
Minnick	§ 102(e)	1–3, 6–9, 11, 15, and 19–22
Riley and Minnick	§ 103(a)	1–3, 6–11, 14, 15, and 18–22
Riley, Minnick, and Harrell	§ 103(a)	12 and 13

¹ We provide a more detailed discussion of Riley's earliest effectively filing date below. *See infra* Section II (D)(1).

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