

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SLING TV, L.L.C., SLING MEDIA, L.L.C.,  
DISH NETWORK L.L.C., DISH TECHNOLOGIES L.L.C.,  
Petitioners,

v.

REALTIME ADAPTIVE STREAMING, LLC,  
Patent Owner.

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Case IPR2018-01331  
Patent 8,867,610 B2

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Before KEVIN W. CHERRY, GARTH D. BAER, and NABEEL U. KHAN,  
*Administrative Patent Judges.*

BAER, *Administrative Patent Judge.*

DECISION  
Granting Institution of *Inter Partes* Review  
*35 U.S.C. § 314*

Sling TV, L.L.C., Sling Media, L.L.C., DISH Network L.L.C., DISH Technologies L.L.C. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1, 2, 6, 8–14, 16, and 18 of U.S. Patent No. 8,867,610 B2 (Ex. 1001, “the ’610 patent”). Realtime Adaptive Streaming, LLC (“Patent Owner”) timely filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). At the parties’ request, we authorized additional briefing addressing whether the petition is time barred under 35 U.S.C. § 315(b). Petitioner filed a Reply to the Preliminary Response (Paper 7, “Reply”) and Patent Owner filed a Sur Reply (Paper 8, “Sur Reply”).

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless “the information presented in the petition . . . and any response . . . 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.” For the reasons set forth below, we conclude that there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims. Therefore, we institute *inter partes* review of the challenged claims.

## I. BACKGROUND

### A. RELATED PROCEEDINGS

The parties assert the ’610 patent is involved in *Realtime Adaptive Streaming LLC v. EchoStar Technologies, LLC*, Case No. 6-17-cv-00567 (E.D. Tex. Oct. 10, 2017); *Realtime Data LLC d/b/a IXO v. Sling TV LLC.*, Case No. 1-17-cv-02097 (D. Colo. Aug. 31, 2017); *Realtime Data LLC d/b/a IXO v. DISH Network Corp.*, Case No. 6-17-cv-00421 (E.D. Tex. Jul. 19, 2017); *Realtime Adaptive Streaming LLC v. Hulu, LLC.*, Case No. 2-17-cv-07611 (C.D. Cal. Oct. 17, 2017); and *Realtime Data LLC d/b/a IXO v.*

*EchoStar Corp.*, Case No. 6-17-cv-00084 (E.D. Tex. Feb. 14, 2017). The '610 patent is also the subject of IPR2018-01090 (PTAB May 18, 2018) and IPR2018-01195 (PTAB June 6, 2018). Pet. 4–5; Paper 3, 2.

#### B. THE '610 PATENT

The '610 patent describes “[d]ata compression and decompression methods for compressing and decompressing data based on an actual or expected throughput (bandwidth) of a system.” Ex. 1001, Abstract. The '610 patent’s method uses “suitable compression algorithm[s] that provide[] a desired balance between execution speed (rate of compression) and efficiency (compression ratio)” when available bandwidth and processing power are limited. *Id.* at 8:8–13. “[B]andwidth sensitive” compression is performed by a controller that tracks a “number of pending access requests to [a] memory system” to determine available “throughput (bandwidth)” of “a system employing [the] data compression.” *Id.* at 9:11–15, 10:31–45. Depending on throughput, the controller selects a compression algorithm with faster compression (but a lower compression ratio) or one with an optimal compression ratio (but slower compression time) to optimize storage and minimize bottlenecks. *Id.* at 13:29–51.

The '610 patent teaches that “another factor that is used to determine the compression algorithm is the type of data to be processed.” *Id.* at 11:30–32. The controller “associates different data types (based on, e.g., a file extension) with preferred one(s) of the compression algorithms.” *Id.* at 11:31–39. Because different data types have different access rates, the '610 patent seeks to improve system performance with a compression algorithm customized according to characteristics of the received data to balance

“execution speed (rate of compression) and efficiency (compression ratio).”

*Id.* at 8:8–13.

### C. ILLUSTRATIVE CLAIM

Petitioner challenges claims 1, 2, 6, 8–14, 16, and 18. Claims 1 and 9 are the only independent claims challenged in the Petition. Independent claim 1 is illustrative of the claimed subject matter and is reproduced below.

1. A method, comprising:

determining, a parameter or an attribute of at least a portion of a data block having video or audio data;

selecting one or more compression algorithms from among a plurality of compression algorithms to apply to the at least the portion of the data block based upon the determined parameter or attribute and a throughput of a communication channel, at least one of the plurality of compression algorithms being asymmetric; and

compressing the at least the portion of the data block with the selected compression algorithm after selecting the one or more, compression algorithms.

*Id.* at 20:1–13.

### D. ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner asserts the following grounds of unpatentability. Pet. 6.

Reference(s)	Basis	Challenged Claim(s)
Vishwanath <sup>1</sup>	§ 102(a)/(e)	1, 6, 9, and 16
Vishwanath	§ 103(a)	1, 6, 9, and 16
Vishwanath and Ishii <sup>2</sup>	§ 103(a)	14
Vishwanath and Kalra <sup>3</sup>	§ 103(a)	2, 8, 10–13, and 18

<sup>1</sup> U.S. Pat. No. 6,216,157 (issued April 10, 2001) (Ex. 1004, “Vishwanath”).

<sup>2</sup> U.S. Pat. No. 5,675,789 (issued Oct. 7, 1997) (Ex. 1005, “Ishii”).

<sup>3</sup> U.S. Pat. No. 5,953,506 (issued Sept. 14, 1999) (Ex. 1006, “Kalra”).

## II. ANALYSIS

In its Preliminary Response, Patent Owner does not challenge Petitioner's substantive patentability arguments. Instead, Patent Owner contends the Petition is time barred under 35 U.S.C § 315(b) and that, in the alternative, we should exercise our discretion to deny the Petition under 35 U.S.C § 325(d).

### A. APPLICATION OF § 315(b) TIME BAR

Section 315(b) provides that “an inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest or privy of the petitioner is served with a complaint alleging infringement of the patent.” 35 U.S.C. § 315(b) (2018). Patent Owner asserts Petitioner is time barred under § 315(b), because Petitioner was served with a complaint alleging infringement of the '610 patent more than one year before it filed the present petition. *See* Prelim. Resp. 1 (citing *Click-to-Call Techs., LP v. Ingenio, Inc.*, 899 F.3d 1321 (Fed. Cir. 2018) (en banc)). For the reasons that follow, we determine the Petition is not time barred.

On June 6, 2017, Realtime Data LLC (“Realtime Data”) filed and subsequently served an amended complaint in the Eastern District of Texas naming Petitioner and alleging infringement of the '610 patent. Prelim. Resp. 2 (citing *Realtime Data LLC v. EchoStar Corp.*, No. 6:17-cv-00084-RWS-JDL). When Realtime Data filed its complaint, however, it did not own the '610 patent, because it had previously recorded an assignment to Realtime Adaptive Streaming on March 7, 2017. *See* Ex. 1023. Realtime Data thus voluntarily dismissed the complaint without prejudice, and on October 10, 2017, Realtime Adaptive Streaming filed a complaint again

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