

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC, and COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

REALTIME ADAPTIVE STREAMING, LLC,
Patent Owner.

IPR2018-01342¹
Patent 8,934,535 B2

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

CHERRY, *Administrative Patent Judge*.

JUDGMENT
FINAL WRITTEN DECISION
35 U.S.C. § 318(a)

Determining All of the Challenged Claims Unpatentable

¹ GOOGLE LLC, who filed a petition in IPR2019-00748, and COMCAST CABLE COMMUNICATIONS, LLC, who filed a petition in IPR2019-00760, were joined as petitioners to this proceeding. On January 17, 2020, we terminated the original Petitioner in IPR2018-01342 (*see* section I.A below), but for administrative convenience we kept IPR2018-01342 open to serve as the consolidated docket for IPR2019-00748 and IPR2019-00760. *See* Paper 45.

I. INTRODUCTION

A. Background

Google LLC (“Google”) and Comcast Communications, LLC (“Comcast”) (collectively, “Petitioner”) filed Petitions (IPR2019-00748, Paper 1; IPR2019-00760, Paper 1) to institute an *inter partes* review of claims 1–6, 8–12, and 14 (the “challenged claims”) of U.S. Patent No. 8,934,535 B2 (Exhibit 1001, “the ’535 Patent”). Google and Comcast also filed timely motions for joinder to the already instituted proceeding in IPR2018-01342, which we granted. *See* Papers 24, 25.

The Petition in IPR2018-01342 was originally filed by Sling TV L.L.C., Sling Media L.L.C., DISH Network L.L.C., and DISH Technologies L.L.C. (collectively, “Sling”) (Paper 2, “Petition” or “Pet.”).² Sling’s Petition requested that we institute an *inter partes* review of the challenged claims. Realtime Adaptive Streaming, LLC (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). We also allowed Sling and Patent Owner to file additional briefing on the issue of whether Sling’s Petition was barred under 35 U.S.C. § 315(b). *See* Papers 7, 8.

² Google and Comcast have represented and we have found (*see* Paper 24, 3; Paper 25, 3) that the Petitions in IPR2019-00748 and IPR2019-00760 are substantially identical to the Petition in IPR2018-01342. Patent Owner acknowledges this. *See* Paper 30, 7. Although Sling is no longer a party, we have maintained IPR2018-01342 to serve as the consolidated docket for IPR2019-00748 and IPR2019-00760. *See* Paper 45, 14. For sake of clarity and simplicity, we treat the Petition in IPR2018-01342 (Paper 2) as representative and all citations are to it, and the papers filed in IPR2018-01342, unless otherwise expressly noted.

The Petition asserts the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 2, 9, 10, 14	102	Dvir ³
1, 2, 9, 10, 14	103	Dvir
3–6, 8, 11, 12	103	Dvir and Ishii ⁴

On January 31, 2019, we instituted an *inter partes* review of all claims challenged in the Petition and on all of the asserted grounds. *See* Paper 9, 26 (“Dec. on Inst.”).

After institution of trial, Patent Owner filed a Patent Owner Response (Paper 19, “PO Resp.”), and Sling filed a Reply (Paper 26, “Reply”). Patent Owner also filed a Sur-Reply (Paper 34, “Sur-Reply”).

Petitioner supports its arguments with a declaration by Scott T. Acton, Ph.D., dated July 3, 2018 (Ex. 1003), and a supplemental declaration by Dr. Acton, dated August 30, 2019 (Ex. 1031). Patent Owner supports its Response with a declaration by Kenneth A. Zeger, Ph.D., dated May 30, 2019 (Ex. 2010). Oral argument was held on December 5, 2019, a transcript of which is included in the record. Paper 43 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. Petitioner bears the burden of proving unpatentability of the challenged claims, and the burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). To prevail, Petitioner must prove unpatentability by a preponderance of the evidence. *See*

³ Dvir, U.S. Patent No. 6,557,001 B1, iss. Apr. 29, 2003, filed Nov. 12, 1999 (Exhibit 1004, “Dvir”).

⁴ Ishii, U.S. Patent No. 5,675,789, iss. Oct. 7, 1997 (Exhibit 1005, “Ishii”).

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35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–6, 8–12, and 14 of the '535 Patent are unpatentable. *See* 35 U.S.C. § 316(e).

B. Related Proceedings

The parties inform us that the '535 Patent is involved in the following litigations:

- *Realtime Data, LLC v. Echostar Corp.*, No. 6:17-cv-84 (E.D. Tex.)
- *Realtime Data LLC d/b/a IXO v. DISH Network Corp. et al.*, 6:17-cv-00421 (E.D. Tex.)
- *Realtime Adaptive Streaming, LLC v. Sling TV, LLC*, No. 1:17-cv-2097 (D. Colo.)
- *Realtime Adaptive Streaming, LLC v. Amazon.com, Inc.*, No. 6:17-cv-549 (E.D. Tex.)
- *Realtime Adaptive Streaming LLC v. EchoStar Technologies, LLC et al.*, No. 6:17-cv-00567 (E.D. Tex.)
- *Realtime Adaptive Streaming, LLC v. Hulu, LLC*, No. 2:17-cv-7611 (C.D. Cal.)
- *Realtime Adaptive Streaming, LLC v. Cisco Systems, Inc.*, No. 6:17-cv-591 (E.D. Tex.)
- *Realtime Adaptive Streaming, LLC v. Brightcove, Inc.*, No. 1:17-cv-1519 (D. Del.)
- *Realtime Adaptive Streaming, LLC v. Haivision Network Video, Inc.*, No. 1:17-cv-1520 (D. Del.)
- *Realtime Adaptive Streaming, LLC v. Polycom, Inc.*, No. 1:17-cv-2692 (D. Colo.)
- *Realtime Adaptive Streaming, LLC v. Netflix, Inc.*, No. 1:17-cv-1692 (D. Del.)

- *Realtime Adaptive Streaming, LLC v. Sony Elecs., Inc.*, No. 1:17-cv-1693 (D. Del.)
- *Realtime Adaptive Streaming, LLC v. Apple, Inc.*, No. 1:17-cv-2869 (D. Colo.)
- *Realtime Adaptive Streaming, LLC v. Adobe Sys. Inc.*, No. 1:18-cv-10355 (D. Mass.)
- *Realtime Adaptive Streaming, LLC v. Samsung Elec. Co., Ltd.*, No. 6:18-cv-00113 (E.D. Tex.)
- *Realtime Adaptive Streaming LLC v. Wowza Media Systems LLC*, No. 1:18-cv-00927 (D. Colo.)
- *Realtime Adaptive Streaming LLC v. Google LLC et al*, No. 2:18-cv-03629 (C.D. Cal.)
- *Realtime Adaptive Streaming LLC v. Avaya Inc.*, No. 1:18-cv-01046 (D. Colo.)
- *Realtime Adaptive Streaming LLC v. Broadcom Corporation et al.*, No. 1:18-cv-01048 (D. Colo.)
- *Realtime Adaptive Streaming LLC v. LG Electronics Inc. et al*, No. 6:18-cv-00215 (E.D. Tex.)
- *Realtime Adaptive Streaming LLC v. Advanced Micro Devices, Inc.*, No. 1:18-cv-01173 (D. Colo.)
- *Realtime Adaptive Streaming LLC v. Intel Corporation*, No. 1:18-cv-01175 (D. Colo.)
- *Realtime Adaptive Streaming LLC v. Mitel Networks, Inc.*, No. 1:18-cv-01177 (D. Colo.)
- *Realtime Adaptive Streaming LLC v. Charter Communications, Inc. et al*, No. 1:18-cv-01345 (D. Colo.)
- *Realtime Adaptive Streaming LLC v. Cox Communications, Inc.*, No. 8:18-cv-00942 (C.D. Cal.)
- *Realtime Adaptive Streaming LLC v. Comcast Cable Communications, LLC*, No. 1:18-cv-01446 (D. Colo.)

Pet. 4–6; Paper 3, 2–4.

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