

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,

v.

WHEREVERTV, INC.,
Patent Owner.

IPR2019-01482
Patent 8,656,431 B2

Before KRISTEN L. DROESCH, BARABARA A. PARVIS, and
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Comcast Cable Communications, LLC, (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1 and 3–9 (“challenged claims”) of U.S. Patent No. 8,656,431 B2 (Ex. 1001, “’431 Patent”). Paper 1 (“Pet”). Petitioner filed a Declaration of Dr. Andrew Lippman (Ex. 1006) with its Petition. WhereverTV, Inc. (“Patent Owner”) timely filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Patent Owner filed a Declaration of Michael I. Shamos, Ph.D, J.D. (Ex. 2001). Pursuant to our authorization, Petitioner filed a Reply to the Preliminary Response (Paper 9) and Patent Owner filed a Sur-Reply (Paper 10).

We have authority to decide whether to institute review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4. An *inter partes* review may not be instituted unless it is determined 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.” 35 U.S.C. § 314(a).

For the reasons provided below, based on the record before us, there is not a reasonable likelihood that Petitioner would prevail in showing at least one of the challenged claims is unpatentable.

B. Related Matters

Petitioner and Patent Owner indicate the ’431 Patent is the subject of *WhereverTV, Inc. v. Comcast Cable Commc’ns., LLC*, Civil Action No. 2:18-cv-529-FTM-99CM (FLMD Aug. 1, 2018). *See* Pet. 1; Prelim. Resp. 1; Paper 5, 1. Petitioner also indicates that the ’431 Patent is the

subject of the petition filed by Petitioner in IPR2019-01483. *See* Pet. 1; Paper 3, 1.

C. The '431 Patent (Ex. 1001)

The '431 Patent discloses an interactive program guide (IPG) application and device to receive, access, manage, and view digital entertainment services from one or more content sources via an internet-enabled device. *See* Ex. 1001, 1:6–11.

Figure 2a of the '431 Patent is reproduced below.

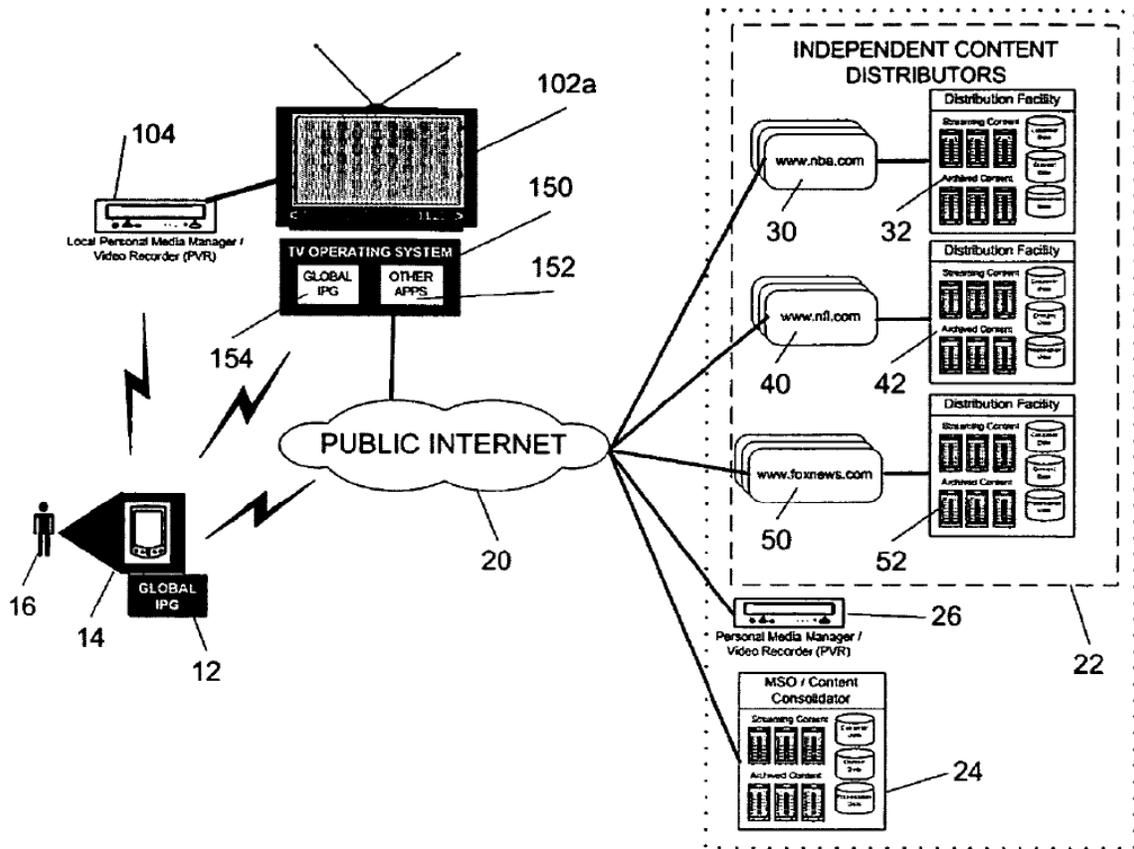


Figure 2a, reproduced above, illustrates an embodiment of a system for implementing the disclosed invention. *See* Ex.1001, 8:43–44, 9:28–29. The system includes television 102a directly connected to public internet 20, global IPG 12 located on mobile multimedia entertainment device (MMED),

independent content distributors 22, MSO/content consolidator 24, and personal media manager 26. *See id.* at 8:63–66, 9:7–14, 9:28–32. Global IPG 12 located on MMED 14 communicates with a segment of global IPG code 154 located on television operating system motherboard 150 to optimize data transfer between internet-connected television 102a and independent content distributors 22 (e.g., NBA.com), MSO/content consolidators 24, and personal media manager 26. *See id.* at 9:30–36. MMED 14 and global IPG 12 are used to obtain and present data about available content and present it to user 16 on global IPG 12, and also on television 102a. *See id.* at 9:39–41, 9:50–52. Once user 16 selects a specific program, global IPG 12 communicates with global IPG segment 154 to route streaming digital content directly from any licensed content provider 21 (e.g., independent content distributors 22, MSO content consolidator 24, or remote personal media manager 26) to television 102a. *See id.* at 9:41–45, 9:53–65. The '431 Patent discloses that it is within the scope of the disclosed invention to implement a program or code that can be stored on a television operating system to permit the television to perform the methods in conjunction with the MMED to acquire, organize, and view content, and acquire metadata from the content owner to a third party. *See id.* at 16:8–14.

One of the core functions of global IPG 12 is a content retrieval and viewing management function, which provides the user with the ability to store and view content data such as channel names, channel locations, program name, duration, and description. *See Ex. 1001, 11:23–27, Fig. 4:302.* Once the user selects a content program to watch, the content retrieval and viewing management function locates and presents the content to the user. *See id.* at 11:27–30, Fig. 4:302. A core application feature of

global IPG 12 is a customization feature, which allows a user to manually set programming preferences, including channel order, and start-up global IPG 12 settings. *See id.* at 12:2–5, Fig. 4:320, 322.

Figure 8 of the '431 Patent is reproduced below:

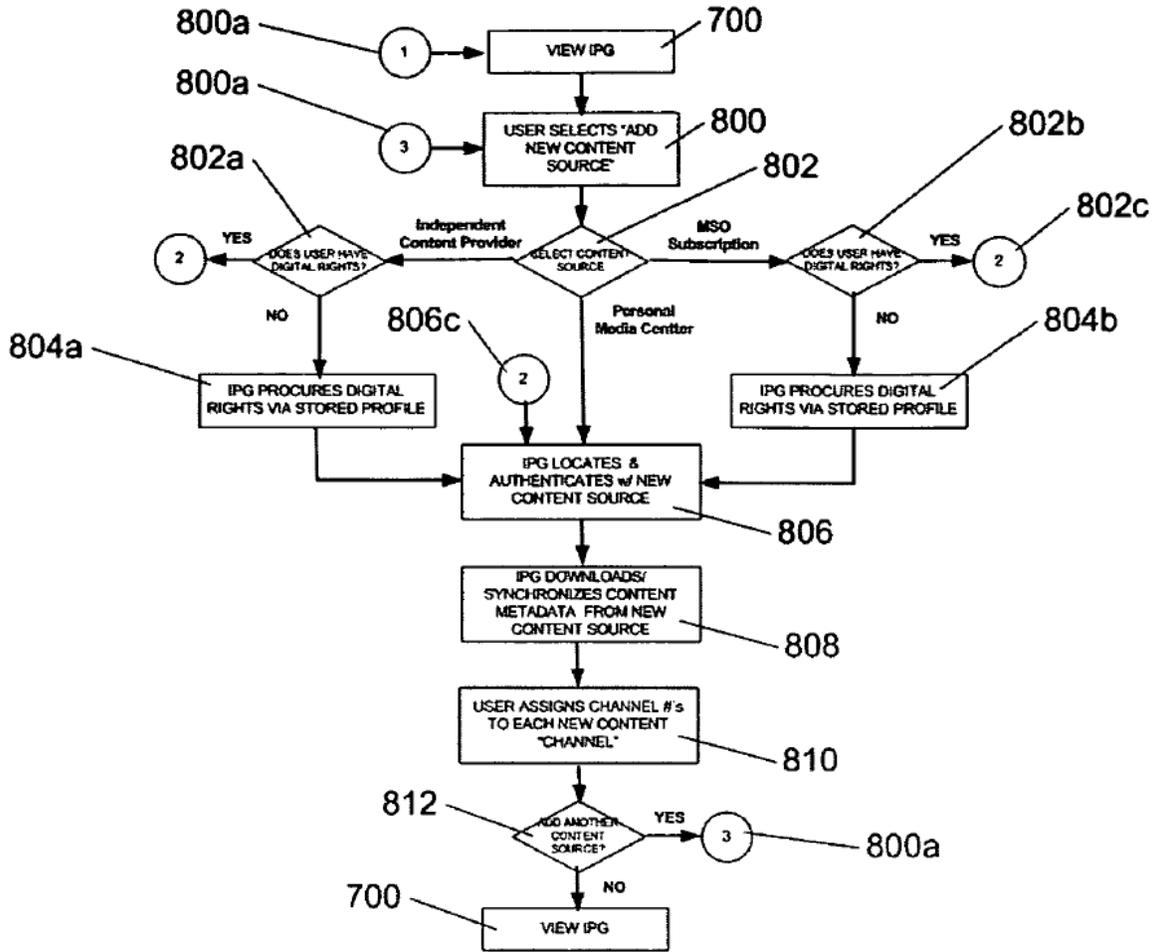


Figure 8 depicts a flow chart illustrating steps to add a new content source, such as traditional MSO subscriptions, independent content providers, and personal content, to the global IPG. *See Ex. 1001, 15:13–19.* For new independent content providers, global IPG 12 verifies if the user has digital access rights at step 802a. *See id.* at 15:21–23. If digital access rights are present, then global IPG 12 authenticates the new content source at step 806. *See id.* at 15:23–25. Relevant metadata (i.e., channel listings, program

listings, program duration, etc.) of the new content source is imported into global IPG 12 at step 808. *See id.* at 15:25–28. At step 810, the user is prompted to assign a channel for each channel of content from the independent content provider. *See id.* at 15:28–30. For new MSO subscriptions, global IPG 12 verifies if the user has digital access rights at step 802b, and, if present, authenticates the new MSO at step 806. *See id.* at 15:38–42. At step 808, relevant metadata (i.e., channel listings, program listings, program duration, etc.) of the new MSO is imported into global IPG, and, at step 810, the user is prompted to assign a channel for each channel of content from the MSO. *See id.* at 15:53–58. For personal media content sources (e.g., personal media manager, personal video recorder), global IPG 12 authenticates the personal content source at step 806, followed by importing metadata from the personal content source to global IPG 12 at step 808. *See id.* at 15:59–64. At step 810, the user is prompted to assign channels for each channel of content from the personal media source. *See id.* at 15:65–67.

D. Illustrative Claim

Claim 1 is independent. Claims 3–9 depend from claim 1. Claim 1 is illustrative and reproduced below:

1. A content manager device comprising:
 - a server resident on a network containing descriptive program data about video content available from one or more multiple cable system operators (MSOs) and one or more non-MSOs;
 - a device capable of establishing and maintaining a connection with the network via a communications link; and
 - an interactive program guide application installed on the device that provides user-configurable interactive program guide (IPG) listing at least one channel of video content available

from each of the one or more MSOs and each of the one or more non-MSOs and descriptive program data from the server for the video content available on each of the channels, wherein each of the channels is selectable for receiving only or virtually entirely streaming video programming from its respective MSO or non-MSO source via the communications link and the network; wherein the server is distinct from at least one of the one or more MSOs and one or more non-MSOs, and wherein the application allows for the IPG to be configured by a user with respect to adding or deleting channels from any of one or more MSOs or the one or more non-MSOs.

E. Asserted Grounds of Unpatentability and Asserted Prior Art

Petitioner asserts that claims 1 and 3–9 would have been unpatentable on the following grounds:

Claims Challenged	35 U.S.C. §	References
1, 5, 7, 8	103	Walter, ¹ JumpTV.com ²
3	103	Walter, JumpTV.com, Furlong ³
4	103	Walter, JumpTV.com, Bednarek ⁴
6	103	Walter, JumpTV.com, Calderone ⁵
9	103	Walter, JumpTV.com, Schoaff ⁶

¹ Ex. 1009, US Patent No. 8,095,954 B2, issued Jan. 10, 2012 (“Walter”).

² Ex. 1011, JUMPTV.COM (June 3, 2002), <http://www.jumptv.com> (“JumpTV.com”).

³ Ex. 1012, US Patent Publication No. 2006/0235800 A1, published Oct. 19, 2006 (“Furlong”).

⁴ Ex. 1013, US Patent No. 6,009,116 A, issued Dec. 28, 1999 (“Bednarek”).

⁵ Ex. 1014, US Patent No. 7,260,538 B2, issued Aug. 21, 2007 (“Calderone”).

⁶ Ex. 1015, International Patent Application Publication WO 00/52928, published Sept. 8, 2000 (“Schoaff”).

II. ANALYSIS

A. Principles of Law

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) if in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

Petitioner contends, relying on the testimony of Dr. Lippman, that a person having ordinary skill in the art “would have had at least a bachelor’s degree in electrical engineering, computer engineering, computer science, or a similar discipline, and at least two years’ experience designing or programming computer networks or applications for transmitting or managing video content.” Pet. 12 (citing Ex. 1006 ¶ 38). Relying on the testimony of Dr. Shamos, Patent Owner contends that a person of ordinary skill in the art “would have had at least a bachelor’s degree in computer science or electrical engineering, or in an equivalent field, or equivalent work experience, and, in addition, at least two years’ work experience with systems involving delivery of networked video content, including streaming, and also familiarity with delivery of television media content over networks, related network protocols, electronic program guides and digital rights

management.” Prelim. Resp. 8 (citing Ex. 2001 ¶ 27). Because the parties do not present a material dispute regarding the level of ordinary skill in the art, for the purpose of determining whether to institute an *inter partes* review, we adopt Petitioner’s proposed level of ordinary skill in the art.

C. Claim Construction

The Board applies the same claim construction standard as the federal courts. *See* 37 C.F.R. § 42.100(b) (2019). The claim construction standard used in a civil action under 35 U.S.C. § 282(b) is generally referred to as the *Phillips* standard. *See Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). Under the *Phillips* standard, words of a claim are given their ordinary and customary meaning. *Phillips*, 415 F.3d at 1312. “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Id.* at 1313. Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification. *Id.*

Petitioner provides explicit constructions for “server” and “multiple cable system operator (MSO).” *See* Pet. 7–12. Patent Owner provides explicit constructions for “multiple system operator” or “MSO,” “non-MSO,” “streaming video programming,” “only or virtually entirely streaming video programming,” and “wherein the server is distinct from at least one of the one or more MSOs and one or more non-MSOs.” *See* Prelim. Resp. 9–16. As demonstrated in the analysis below, for the purpose of determining whether to institute *inter partes* review, we need only construe the term “containing.”

“Containing”

Claim 1 recites “a server resident on a network *containing* descriptive program data about video content available from one or more multiple cable system operators (MSOs) and one or more non-MSOs.” Ex. 1001, 16:33–36 (emphasis added). Although Petitioner does not provide an express construction for the term “containing,” Petitioner provides the following proposed construction for “server”: “a computer on a network that *supplies* information when it receives requests via the network.” See Pet. 7 (citing Ex. 1006 ¶¶ 26–30) (emphasis added).

Petitioner asserts that the surrounding claim language supports Petitioner’s proposed construction for “server” because “claim 1 recites a server ‘resident on a network’ that supplies information via the network to the device, namely, ‘descriptive program data about video content.’” See *id.* (citing Ex. 1006 ¶¶ 26–30). Petitioner contends that the ’431 Patent “[S]pecification does not mention the word ‘server’ and does not implicitly describe any server containing descriptive program data about video content available from MSOs and non-MSOs.” *Id.* Petitioner also asserts the prosecution history provides no description of any server beyond what is claimed. See *id.* at 7–8 (citing Ex. 1002, 245, 346). Petitioner cites extrinsic evidence in the form of dictionaries to support its construction for “server.” See *id.* at 8 (citing Ex. 1006 ¶¶ 26, 30; Ex. 1007, 3; Ex. 1008, 3). Based on Petitioner’s arguments addressing “server,” we understand Petitioner construes the term “containing” as “supplying.”

We do not agree with Petitioner’s position regarding the meaning for “containing.” We agree with Petitioner that the ’431 Patent Specification does not explicitly disclose a “server” or a “server . . . containing descriptive

program data” using the same terms as claim 1. We, however, disagree with Petitioner’s argument that the ’431 Patent Specification does not implicitly disclose any server containing descriptive program data about video content available from MSOs and non-MSOs.

The ’431 Patent Specification discloses, in other terms, “a server . . . containing descriptive program data.” The ’431 Patent Specification discloses television 102a directly connected to the Internet and global IPG 12 on MMED 14 that communicates with segment of global IPG code 154 located on the television’s operating system motherboard, in order to optimize data transfer between internet-connected television 102a and independent content distributors 22, MSO/content consolidators 24, and a personal device manager 26. *See* Ex. 1001, 9:28–36; Fig. 2a. The global IPG 12 obtains and presents data about available content to the user on MMED 14, and also on television 102a. *See id.* at 9:41–43, 50–52. Once the user selects a specific program, global IPG 12 communicates with global IPG code segment 154 on the television’s operating system to route the streaming digital content directly from the licensed content provider to television 102a. The ’431 Patent Specification also discloses that it is within the scope of the invention to implement a program or code stored on a television operating system to permit a television to perform any of the methods described in the ’431 Patent, or work in conjunction with the MMED to acquire, organize, and view content, and acquire content metadata from the content owner or a third party. *See id.* at 16:8–14.

The ’431 Patent Specification discloses, as a core function of global IPG 12, a content and retrieval management function that provides a user with the ability to store and view content data such as channel names,

channel locations, program name, duration and description. *See id.* at 11:23–27; *see also id.* at 8:31–34 (“Metadata related to the remotely stored content is transferred to and locally stored in the device in the form of the global IPG.”). In summary, we find that, based on the disclosure of a global IPG (whether implemented on a MMED and/or television operating system) that stores content data such as channel names, channel locations, program name, duration, and description (i.e., metadata), the ’431 Patent discloses “a server . . . containing descriptive program data.”

To ascertain the ordinary and customary meaning of “containing” we look to the meaning that the term would have had to a person of ordinary skill in the art at the time of the invention, when that claim term is read in the context of the particular claim in which it appears, and the entire patent, including the specification. In the context of “a server . . . containing descriptive programming data,” recited in claim 1, and the ’431 Patent Specification disclosure of a global IPG that stores content data such as channel names, channel locations, program name, duration, and description (i.e., metadata), we determine that the ordinary and customary meaning that “containing” would have had to person of ordinary skill in the art at the time of the invention is “storing.”

Other Claim Terms and Phrases

As demonstrated in the analysis below, we do not find it necessary to construe any other claim terms or phrases. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Unpatentability of Claims 1 and 3–9

1. Overview of Walter (Ex. 1009)

Walter discloses a system for providing custom channel arrangements in an electronic programming guide (EPG). *See* Ex. 1009, code (54), 5:23–29.

Figure 1 of Walter is reproduced below.

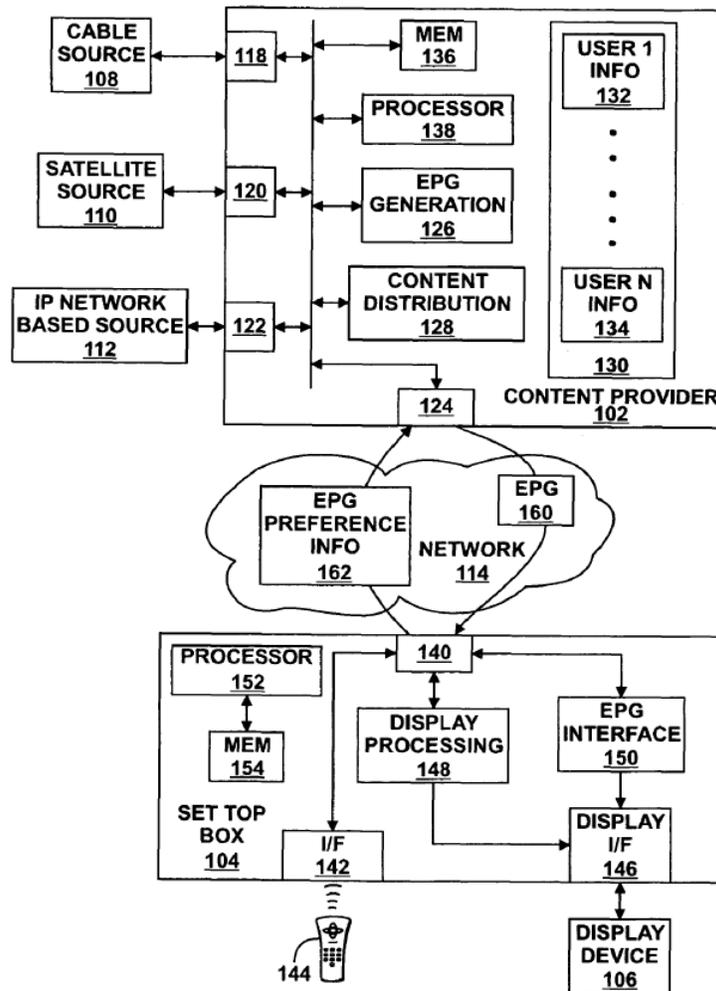


Figure 1 depicts a block diagram of an exemplary system for distributing an EPG. *See* Ex. 1009, 1:49–50, 3:43–45. System 100 includes multimedia content provider 102, set top box 104, display device 106, and a plurality of content sources, such as cable television 108, satellite 110, and IP network-

based source 112. *See id.* at 3:45–51. Content provider 102 and set top box 104 are connected by network 114, which may include a cable television distribution network, satellite distribution network, broadcast television distribution network, and a data packet-based computer network. *See id.* at 3:51–56. Content provider 102 includes one or more interfaces 118, 120, 122 to interface with the content sources, and interface 124 to interface with set top box 104. *See id.* at 3:59–62. Content provider 102 includes EPG generation module 125, multimedia content distribution module 128, and user preference storage module 130. *See id.* at 3:67–4:5.

Set top box 104 includes interface 140 for interfacing with content provider 102 via network 114, control interface 142 for receiving user inputs and commands via remote control 144, and display interface 146 for interfacing with display device 106. *See Ex. 1009, 4:16–20.* Set top box 104 also includes display processing module 148, and EPG interface module 150. *See id.* at 4:28–30.

Content provider 102 receives data representative of multimedia channels from each content source 108, 110, 112, and provides data representative of at least a subset of the multimedia channels to set top box 104 for processing and display on display device 106. *See Ex. 1009, 4:37–43.* Content provider 102 provides data representative of EPG 160 to set top box 104 for processing by display processing module 148 and navigation by a user via control interface 142 and EPG interface module 150. *See id.* at 4:43–47. EPG 160 represents a unified EPG including listings of multimedia channels provided by content sources 108, 110, 112 that provide multimedia channels to content provider 102. *See id.* at 4:47–51. EPG 160 may combine representations of all of the multimedia

channels from different content sources in a single list, or different lists for different content sources may be displayed concurrently by EPG 160. *See id.* at 4:58–61. Multimedia channels may be organized within EPG 160 based on genre or category of program content, for example, “comedy,” “action,” etc. *See id.* at 4:61–5:2, Fig. 6.

Set top box 104 provides user preference information as EPG preference information 162 to content provider 102. *See Ex.* 1009, 5:11–13. Content provider 102 stores EPG preference information 162 in user information storage module 130. *See id.* at 5:13–16. Content provider 102 can modify one or more characteristics of EPG 160 based on EPG preference information 162. *See id.* at 5:16–18.

Figure 2 is reproduced below.

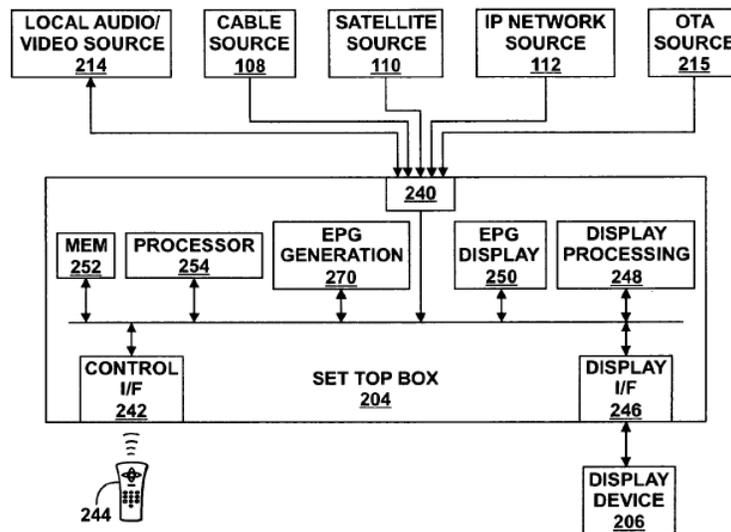


Figure 2 depicts set top box-based system 200 for providing a custom EPG. *See Ex.* 1009, 1:54–56, 5:26–27. Set top box-based system 200 includes set top box 204, display device 206, a plurality of content sources, including cable source 108, satellite source 110, and IP network-based source 112. *See id.* at 5:29–36. Set top box 204 includes one or more content

interfaces 240 to receive data representative of one or more multimedia channels from the content sources. *See id.* at 5:37–41. Set top box 204 includes control interface 242 to receive control input from a user via remote control 244, and display interface 246 for interfacing with display device 206. *See id.* at 5:41–44. Set top box 204 includes display processing module 248, EPG display module 250, and EPG generation module 270. *See id.* at 5:45–47. EPG generation module 270 receives user preference information via control interface 242 and generates a custom EPG based on the user preference information. *See id.* at 5:54–57. User input can include input representing the addition of one or more channels to the EPG by EPG generation module 270, deletion of one or more channels from EPG or information associated with one or more multimedia channels of EPG. *See id.* at 6:11–15, 6:22–25, Fig. 5. Data representative of the generated EPG is provided to EPG display module 250, and formatted for display 206. *See id.* at 5:61–64. Processed data is provided to display processing module 248 for further processing and formatting and then provided to display interface 246 and display device 206. *See id.* at 5:64–67, 6:25–27.

2. Overview of JumpTV.com (Ex. 1011)

JumpTV.com is a printout of webpages available from JumpTV.com. *See Ex. 1011.* JumpTV.com provides live TV broadcasts from broadcasters around the world and direct links to video streams from other Internet sites. *See id.* at 5.

3. Unpatentability of Claims 1, 5, 7, and 8 over Walter and JumpTV.com

Petitioner presents at least two different positions addressing the teachings of Walter as applied to the claim 1 limitation “a server resident on

a network containing descriptive program data about video content available from one or more multiple cable system operators (MSOs) and one or more non-MSOs.” We address each of Petitioner’s positions in turn.

a. Petitioner’s Position Regarding the Embodiment of Walter’s Figure 1

Petitioner contends that Walter teaches “a server resident on a network,” as recited in claim 1, based on Walter’s disclosure of content provider 102. *See* Pet. 20; Ex. 1009, Fig. 1. According to Petitioner, Walter’s content provider 102 includes at least EPG generation module 126 and content distribution module 128 which are implemented as executable instructions stored in memory 136 and executed by processor 138. *See* Pet. 20 (citing Ex. 1009, 4:7–13); Ex. 1009, Fig. 1; *see also* Pet. 20–21 (analogizing content provider 102 with Walter’s description of computer system 2200; citing Ex. 1006 ¶ 58; Ex. 1009, 2:20–23, 14:7–15, 14:18–22, 14:40–44, 15:13–16, Fig. 22). Petitioner asserts that content provider 102 provides content through content distribution module 128 and EPG data through EPG generation module 126 to set-top box 104. *See id.* at 20 (citing Ex. 1009, 3:59–4:15, 4:43–47, 10:56–11:43). Petitioner contends that the server of the content provider 102 is a computer on network 114. *See id.* (citing Ex. 1009, 3:59–4:15, 4:43–47, 10:56–11:43), *id.* at 21 (citing Ex. 1009, 3:51–58; Ex. 1006 ¶ 59).

Petitioner further asserts that Walter teaches the server “containing descriptive program data about video content,” as recited in claim 1. *See* Pet. 22. More specifically, Petitioner asserts that content provider 102 receives data representative of multimedia channels from each of the different content sources, e.g., cable source 108 and IP network-based source 112, and provides data representative of a least a subset of the

multimedia channels to set-top box 104 for processing and display at display device 106. *See id.* (citing Ex. 1009, 4:37–43; Ex. 1006 ¶ 61). Petitioner contends that Walter teaches descriptive program data based on Walter’s disclosure of various genres or categories such as comedy, action, etc. *See id.* (citing Ex. 1009, 4:66–5:2; Ex. 1006 ¶ 61). According to Petitioner, “[t]his descriptive program data about video content [(i.e., the aforementioned genres or categories)] is contained in and used by the server, and specifically the EPG generation module 126 of the server for ‘generating and modifying an EPG to reference multimedia channels from a plurality of content sources.’” *Id.* at 22–23 (quoting Ex. 1009, 4:66–5:2, 6:28–30; citing Ex. 1009, 3:10–12; Ex. 1006 ¶ 61).

Petitioner does not rely on the teachings of JumpTV.com for teaching “a server resident on a network containing descriptive program data about video content.” *See* Pet. 20–23. Instead, Petitioner relies on JumpTV.com for teaching the descriptive program data about video content is “available from one or more multiple cable system operators (MSOs) and one or more non-MSOs.” *See id.* at 23–29. Specifically, Petitioner asserts that Walter discloses descriptive program data about video content from a cable source, but does not disclose that the cable source is an MSO. *See id.* at 23. Petitioner contends that JumpTV.com teaches an MSO. *See id.* at 23–26. Petitioner asserts that it would have been obvious to one with ordinary skill in the art at the time of the invention to substitute JumpTV.com’s MSO for Walter’s cable source. *See id.* at 26–29.

Patent Owner argues that Petitioner has not shown that Walter discloses the server recited in claim 1. *See* Prelim. Resp. 21. Specifically, Patent Owner asserts that Petitioner wrongly maps Walter’s EPG generation

module 126 to the server. *See id.* at 22. We agree with Patent Owner’s general argument.

As explained above in Section II.B., the ordinary and customary meaning for “containing” is “storing.” In view of this ordinary and customary meaning for “containing,” Petitioner does not direct us to evidence sufficient to demonstrate a reasonable likelihood that Walter discloses, teaches, or suggests “a server . . . containing descriptive program data.” For example, Petitioner asserts that Walter’s content provider 102 receives data representative of multimedia channels from cable source 108 and IP network-based source 112 and provides a subset of this data to set-top box 104. *See* Pet. 22 (citing Ex. 1009, 4:37–43; Ex. 1006 ¶ 61 (stating the same)). Petitioner, however, does not explain sufficiently how Walter’s disclosure of content provider 102 *receiving* this data representative of multimedia channels teaches or suggests content provider 102 *containing or storing* this data. As another example, Petitioner asserts that Walter discloses descriptive program data that includes various genres and categories and that is contained in and used by server, specifically EPG generation module 126. *See id.* at 22–23 (citing Ex. 1006, 3:10–12, 4:66–5:2, 6:28–30; Ex. 1006 ¶ 61 (stating the same)). Petitioner, however, does not identify where Walter discloses, teaches, or suggests that EPG generation module 126 contains or stores genres and categories. Instead of disclosing that Walter’s EPG generation module 126 stores genres and categories, the disclosures of Walter cited by Petitioner merely teach that EPG generation module 126 generates an EPG, and that multimedia channels may be organized within an EPG guide based on a variety of characteristics, including genre or categorization of the video program

presented by the multimedia channel. *See* Ex. 1006, 3:10–12, 4:66–5:2 6:28–30, Figs. 3, 6. As a final example, to the extent that Petitioner asserts that Walter’s EPG generation module 126 and content distribution module 128 teaches or suggests a server (*see* Pet. 20), Petitioner does not explain sufficiently how Walter’s EPG generation module 126 and/or content generation module 128 contains or stores received data representative of the multimedia channels or genres and categories.

In addition, we give little weight to Dr. Lippman’s testimony cited in support of Petitioner’s assertions because Dr. Lippman does not disclose underlying facts to support this testimony. *See* Ex. 1006 ¶¶ 57–59, 61; 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”). Dr. Lippman’s testimony is identical to the arguments presented in the Petition. *Compare* Ex. 1006 ¶¶ 57–59, 61, *with* Pet. 20–23. Aside from citations to the disclosures of Walter, discussed immediately above, Dr. Lippman does not provide additional underlying facts to support his testimony that Walter discloses a server containing descriptive program data, in accordance with the ordinary and customary meaning of “containing.” *See* Ex. 1006 ¶¶ 57–59, 61.

b. Petitioner’s Position Regarding the Embodiment of Walter’s Figure 2

Petitioner contends that Walter teaches “a server resident on a network,” as recited in claim 1, based on Walter’s disclosure of set top box system 200. *See* Pet. 21. Petitioner asserts that Walter’s set top box 204 includes at least display processing module 248, EPG display module 250, and EPG generation module 270. *See id.* at 21–22 (citing Ex. 1009, 5:45–6:27). Petitioner asserts that set top box 204 is resident on a network

comprised content sources 108, 112, and display device 206. *See id.* at 22 (citing Ex. 1009, Fig. 2; Ex. 1006 ¶¶ 59–60).

Petitioner further asserts that Walter teaches the server “containing descriptive program data about video content,” as recited in claim 1. *See* Pet. 23. According to Petitioner, set-top box 204 contains descriptive program data from multimedia channels from content sources 108 and 112 and provides data representative of the channels to generate an EPG. *See id.* (citing Ex. 1006, 5:37–67; Ex. 1006 ¶ 61); Ex. 1006 ¶ 62). As explained above in the preceding section, Petitioner does not rely on JumpTV.com for teaching “a server resident on a network containing descriptive program data about video content.” *See id.* at 20–23.

Patent Owner argues that Petitioner’s mapping of Walter’s Figure 2 to the limitations of claim 1 fails for the same reasons as the embodiment of Figure 1. *See* Prelim. Resp. 30. We agree with Patent Owner’s general argument.

As discussed above in Section II.B., the ordinary and customary meaning for “containing” is “storing.” In view of this ordinary and customary meaning for “containing,” Petitioner does not direct us to evidence sufficient to demonstrate that Walter discloses, teaches, or suggests “a server . . . containing descriptive program data of video content.” For example, Petitioner asserts that Walter’s set-top box 204 contains descriptive program data from multimedia channels from content sources 108 and 112 and provides data representative of the channels to generate an EPG. *See* Pet. 23 (citing Ex. 1009, 5:37–67; Ex. 1006 ¶ 61 (stating the same)). Petitioner, however, does not identify where Walter discloses, teaches, or suggests that set top box 204, or display processing module 248, EPG

display module 250, and EPG generation module 270 therein, stores data representative of one or more multimedia channels. Instead of disclosing set top box 204, or the components therein, storing data representative of one or more multimedia channels, the disclosures of Walter cited by Petitioner merely teach that set top box 204 receives data representative of one or more multimedia channels from the content sources and that EPG generation module 270 generates a custom EPG listing multimedia channels of one or more of the content sources based on user preference information. *See* Ex. 1009, 5:37–67.

We also give little weight to Dr. Lippman’s testimony cited in support of Petitioner’s assertions because Dr. Lippman does not disclose underlying facts to support his testimony that Walter’s set top box 204 contains descriptive program data from multimedia channels. *See* Ex. 1006 ¶¶ 60, 62; 37 C.F.R. § 42.65(a). Dr. Lippman’s testimony is identical to the arguments presented in the Petition. *Compare* Ex. 1006 ¶¶ 60, 62, *with* Pet. 21–23. Aside from the citations to the disclosures of Walter, discussed immediately above, Dr. Lippman does not provide additional underlying facts to support his testimony that Walter discloses a server containing descriptive program data, in accordance with the ordinary and customary meaning of “containing.” *See* Ex. 1006 ¶¶ 60, 62.

c. Summary

Based on the record before us, Petitioner has not set forth evidence sufficient to demonstrate a reasonable likelihood that the combination of Walter and JumpTV.com disclose, teach, or suggest “a server resident on a network containing descriptive program data about video content available from one or more multiple cable system operators (MSOs) and

one or more non-MSOs,” as recited in claim 1. Due to the dependency of claims 5, 7, and 8 from claim 1, and for the same reasons as those explained above addressing claim 1, Petitioner has not set forth sufficient evidence to demonstrate a reasonable likelihood that the combination of Walter and JumpTV.com disclose, teach, or suggest all of the limitations of claims 5, 7, and 8. Accordingly, based on the record before us, Petitioner has not established a reasonable likelihood that it would prevail in showing claims 1, 5, 7, and 8 are unpatentable over Walter and JumpTV.com.

4. Unpatentability of Claims 3, 4, 6, and 9 over Walter, JumpTV.com and Additional Art

Claims 3, 4, 6, and 9 depend from claim 1. As applied by Petitioner, the teachings of Furlong, Bednarek, Calderone, and Schoaff do not remedy the deficiencies of Walter and JumpTV.com discussed in the preceding sections addressing claim 1. *See* Pet. 50–63. Accordingly, for the same reasons as those addressing claim 1, based on the record before us, Petitioner has not established a reasonable likelihood it would prevail in showing:

- (1) claim 3 is unpatentable over Walter, JumpTV.com, and Furlong,
- (2) claim 4 is unpatentable over Walter, JumpTV.com, and Bednarek;
- (3) claim 6 is unpatentable over Walter, JumpTV.com, and Calderon; and
- (4) claim 9 is unpatentable over Walter, JumpTV.com, and Schoaff.

E. Discretion to Deny Institution

Patent Owner urges the Board to exercise its discretion and deny institution of review under 35 U.S.C. §§ 314 and 325(d). *See* Prelim. Resp. 46–47. Petitioner and Patent Owner filed additional briefing to address discretion to deny under 35 U.S.C. § 314. *See* Papers 9, 10. We need not reach or address the parties’ arguments because, as demonstrated in the

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above analysis, we determine, based on the record before us, Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing at least one of the challenged claims is unpatentable.

III. CONCLUSION

For the foregoing reasons, there is not a reasonable likelihood that Petitioner would prevail in showing at least one of the challenged claims of the '431 Patent is unpatentable.

IV. ORDER

In consideration of the foregoing, it is hereby:
ORDERED that, pursuant to 35 U.S.C. § 314(a), the Petition is denied, and no *inter partes* review is instituted.

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