

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

VEVEO, INC.,
Patent Owner.

Case Nos.
IPR2019-00290, IPR2019-00291, IPR2019-00292,
IPR2019-00293
Patent 7,937,394 B2

PETITIONER'S NOTICE RANKING PETITIONS
(As Authorized by the Board's Order Dated April 26, 2019)

Rovi, an approximately billion dollar company, and its wholly-owned subsidiary, Veveo, have asserted 37 patents and over 1,000 claims against Comcast across multiple ITC and district court proceedings. The burden on the Board in having to deal with these patents is a direct result of Rovi’s litigation strategy. Comcast has yet to file a petition concerning a Rovi or Veveo patent that has not first been asserted against it, and, because of the statutory time bar, Comcast has had no choice but to file petitions at the same time. Rovi and Veveo seek to benefit from their strategy of asserting numerous invalid patents at once by arbitrarily stripping away Petitioner’s fully justified petitions. They should not be permitted to do so.

The petitions are meritorious and justified in light of positions Veveo has taken and may take. The petitions should be considered in the following order:

Rank	Petition	Primary Reference
A	IPR2019-00290 (Pet. 1 of 4)	Howard
B	IPR2019-00292 (Pet. 3 of 4)	Gross
C	IPR2019-00291 (Pet. 2 of 4)	Zigmond
D	IPR2019-00293 (Pet. 4 of 4)	Venkataraman

Below are some of the material differences between the petitions:

(1) **“Determining” Step**: Claim 1 recites “determining which letters and numbers . . . caused the items to be associated with the strings of one or more unresolved keystrokes that directly mapped to the subset.” The Petitions take different approaches to this limitation. Petition 1 (Howard) shows that the “determining” step is met when the prior art system accesses a search index.

IPR2019-00290, Paper 2 at 39–41. Petition 2 (Zigmond) shows that the “determining” step is part of the highlighting feature in one reference (Payne), similar to the ’394 Patent’s description. IPR2019-00291, Paper 2 at 46–52. Petition 3 (Gross) relies on the highlighting feature as taught by a combination of references (Gross and Smith). IPR2019-00292, Paper 2 at 43–46. Petition 4 (Venkataraman) shows that the “determining” step is obvious over the ’394 Patent’s parent, the ’011 Patent—because the ’394 Patent is not entitled to its priority claim to the ’011 Patent—and another reference (Samuelson) that teaches reordering highlighted search results. IPR2019-00293, Paper 2 at 40–46.

Veveo, to date, has taken inconsistent positions regarding the meaning of the “determining” step, making it impossible to predict their final position on the meaning of this term. For example, before the ITC, Veveo’s expert argued that the “determining” step is part of creating a search index. *See* IPR2019-00293, Paper 2 at 26. Later, during his deposition, Veveo’s ITC expert argued that the “determining” step is separate from creating an index but that “the determining interacts with the index.” *Id.* at 27. In its Preliminary Response to Petition 4, Veveo argues that the “determining” is separate from the indexing, but is “a necessary fact established in the index during the mapping” (*i.e.*, during generation of the index), and also that the “determining” is a “natural and necessary predicate to the subsequent dynamic highlighting embodiments.” IPR2019-00293, Paper 10 at 36.

Veveo has also argued that it is inconsistent for indexing to occur before searching and “determining” to occur after searching, appearing to suggest that they must occur together. *See* IPR2019-00290, Paper 9 at 34, 37. Veveo has also stated that the term does not need to be construed. IPR2019-00290, Paper 9 at 27–28.

(2) ***'394 Patent's Priority Claim:*** Petition 4 relies on the '011 Patent as prior art because the '394 Patent is not entitled to its own priority claim to the '011 Patent. The other petitions do not rely on challenging the '394 Patent's priority claim.

(3) ***Type of Prior Art:*** Two petitions (Pets. 1 and 2) rely on base references (Howard and Zigmond) that qualify as prior art under § 102(e), meaning that Veveo could potentially try to antedate them. Howard was filed less than a month before Veveo's earliest claimed priority date, whereas Zigmond was filed over a year before Veveo's earliest claimed priority date. Petition 3 relies on § 102(b) prior art (Gross and Smith) that cannot be antedated. Petition 4 relies on the '011 Patent and an intervening reference (Samuelson) filed within one year of the '394's filing date, meaning that Rovi could try to argue that it is entitled to the '011 Patent's priority date (it is not) or try to antedate Samuelson. Instituting each petition will ensure that Veveo cannot eliminate all instituted petitions by swearing behind the prior art.

(4) ***New Prior Art:*** Three petitions (Pets. 1, 2, and 4) rely on prior art that was never considered by the examiner (Zigmond, Payne, and Samuelson). Petition 3 relies on a reference that was cited but never applied by the examiner (Smith) and a

reference that is related to a reference that was cited but never applied (Gross).

(5) **“Tree” vs. “Inverted” Indexes:** Claim 1 requires an “index having an association between subsets of the items and corresponding strings of one or more unresolved keystrokes for overloaded keys” Veveo has not taken a position on the form of the “index” required by the claims. The search index discussed in Veveo’s provisional application (to which the ’394 Patent claims priority) is a type of tree index called a “trie.” IPR2019-00290, Exhibit 1003, ¶ [0023]. Veveo’s expert argued in the related ITC proceeding that the “determining” step is part of generating the disclosed trie index. IPR2019-00290, Exhibit 1014, ¶¶ 169–171. Petition 1 relies on art (King) that shows a very similar tree index. IPR2019-00290, Paper 2 at 36. Petition 4 relies on the ’011 Patent, which has the same disclosure as the ’394 Patent, for this feature. By contrast, the other two petitions rely on prior art describing an inverted index that does not use a tree structure.

(6) **Highlighting:** Claim 1 recites “in response to each unresolved keystroke, as the identified items are displayed, highlighting the letters and numbers” Three petitions (Pets. 1, 2, and 4) rely on single references (Howard, Payne, Venkataraman, and Samuelson) that show the claimed highlighting of characters in response to unresolved keystrokes, whereas the other petition (Pet. 3) relies on Gross to teach highlighting and Smith to teach unresolved keystrokes.

The following tables summarize these differences.

Pet.	Determining	Tree vs. Inverted Index	Highlighting	Priority Challenge
1	Index Traversal	Tree	Disclosed by both Howard and Payne	
3	Highlighting	Inverted	Disclosed by Combining Multiple References	
2	Highlighting	Inverted	Disclosed by Payne	
4	Reordering Highlighted Results	Tree	Disclosed by both Venkataraman and Samuelson	✓

Pet.	References	Filing Date	Cannot Antedate	Cited
1	Howard	2005-07-29		Related Art Cited
	King	1996-07-26	✓	Cited
	Payne	1998-10-05	✓	New
3	Gross	2003-09-03	✓	Related Art Cited
	Smith	2000-12-26	✓	Cited
2	Zigmond	2004-05-12		New
	Smith	2000-12-26	✓	Cited
	Payne	1998-10-05	✓	New
4	Venkataraman	2005-12-20		Cited (Priority Claim)
	Samuelson	2006-12-12		New

The Board should not exercise its discretion to deny institution in an IPR regarding a patent that Veveo purports to read on a feature available in millions of homes. The differences between the petitions are due to Veveo's uncertain positions and aggressive litigation strategy, which will continue until the Patent Owner Responses are filed.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PETITIONER'S NOTICE RANKING PETITIONS was served electronically via e-mail on May 10, 2019 on the following counsel of record for Patent Owner:

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