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Paper 12
Date: March 3, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner

v.

WHEREVERTV, INC.,
Patent Owner.

IPR2019-01483
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. 1101, "'431 Patent"). Paper 1 ("Pet"). Petitioner filed a Declaration of Dr. Andrew Lippman (Ex. 1106) with its Petition. WhereverTV, Inc. ("Patent Owner") timely filed a Preliminary Response. Paper 7 ("Prelim. Resp."). Patent Owner filed a Declaration of Michael I. Shamos, Ph.D, J.D. (Ex. 2101). Pursuant to our authorization, Petitioner filed a Reply to the Preliminary Response (Paper 10) and Patent Owner filed a Sur-Reply (Paper 11).

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 IPR2019-01482. *See* Pet. 1; Paper 3, 1.

C. The '431 Patent (Ex. 1101)

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. 1101, 1:6–11.

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

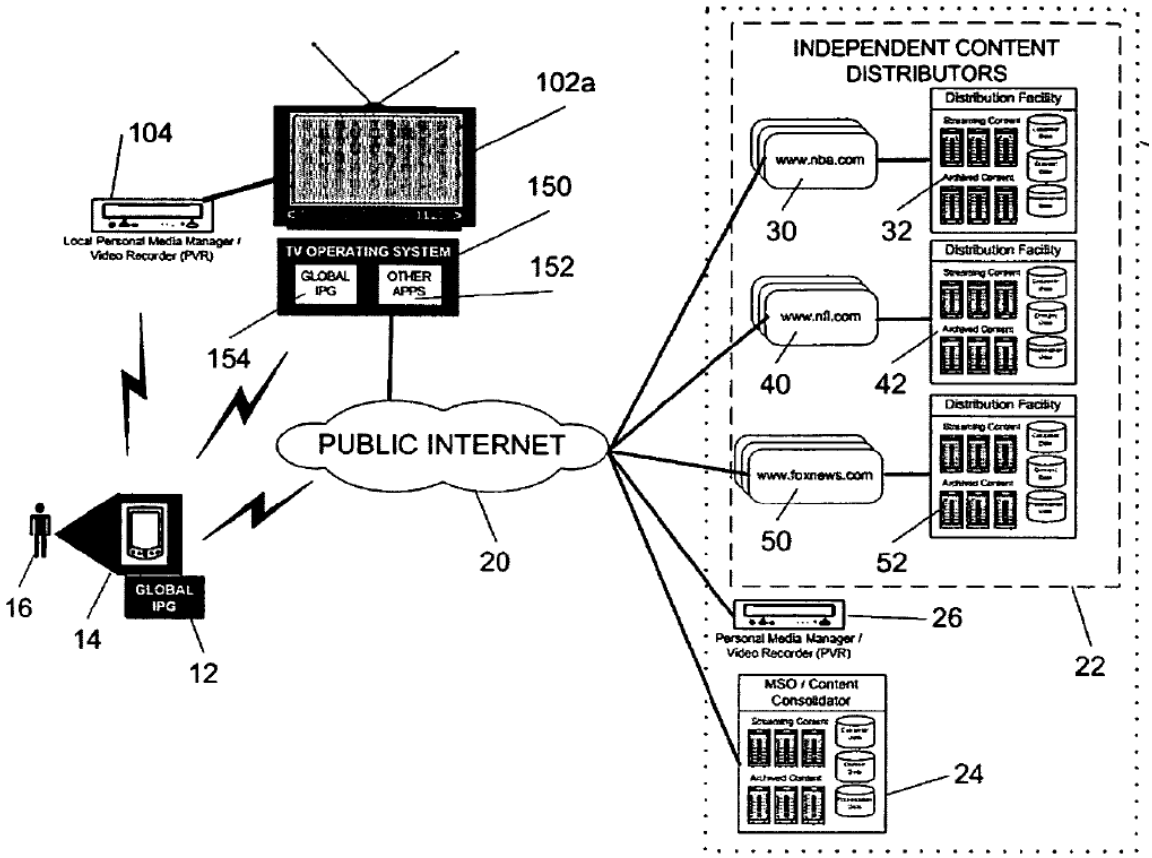

Figure 2a, reproduced above, illustrates an embodiment of a system for implementing the disclosed invention. *See* Ex. 1001, 8:43–44, 9:28–29. The system includes television 102a directly connected to public internet 20, global IPG 12 located on mobile multimedia entertainment device (MMED),

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 presented it 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. 1101, 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:

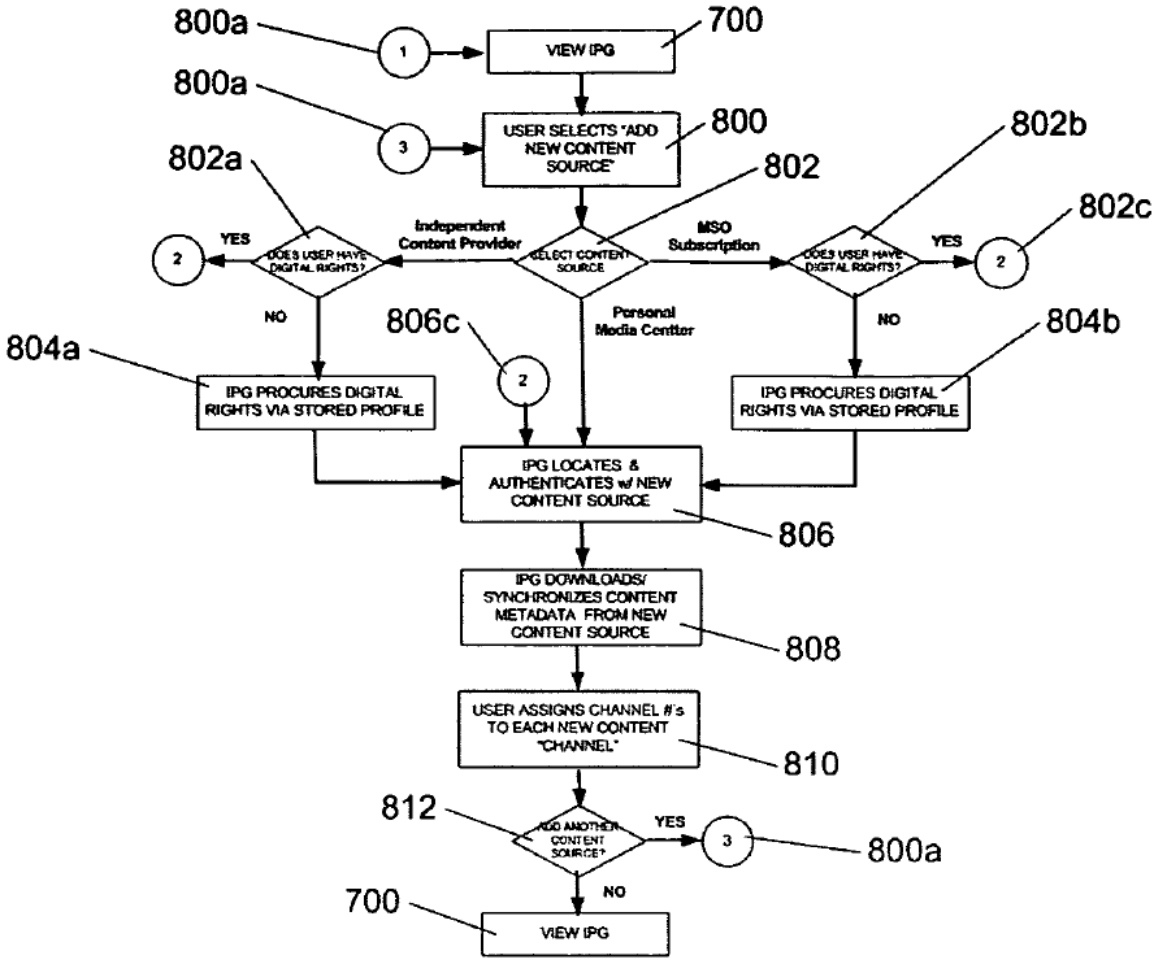

Figure 8 depicts a flow chart illustrating steps to add a new content source, such as traditional MSO subscriptions, independent content providers, and personal content, to the global IPG. *See* Ex. 1101, 15:13–19. For new independent content providers, global IPG 12 verifies if the user has digital 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 with 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, 9	103	Ramraz,[1] Bayrakeri[2]
3	103	Ramraz, Bayrakeri, Furlong[3]
4	103	Ramraz, Bayrakeri, Bednarek[4]
6	103	Ramraz, Bayrakeri, Calderone[5]

[1] Ex. 1110, US Patent No. 7,546,623 B2, issued June 9, 2009 ("Ramraz").
[2] Ex. 1111, US Patent No. 7,373,652 B1, issued May 13, 2008 ("Bayrakeri").
[3] Ex. 1114, US Patent Publication No. 2006/0235800 A1, published Oct. 19, 2006 ("Furlong").
[4] Ex. 1115, US Patent No. 6,009,116 A, issued Dec. 28, 1999 ("Bednarek").
[5] Ex. 1116, US Patent No. 7,260,538 B2, issued Aug. 21, 2007 ("Calderone").

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. 12–13 (citing Ex. 1006 ¶ 37). 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. 2101 ¶ 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. 8–12. 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 do not find it necessary to construe any 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 Ramraz (Ex. 1110)

Ramraz discloses systems and methods for providing multi-source content in electronic program guides (EPGs). *See* Ex. 1110, codes (54), (57), 1:32–34.

Figure 1 of Ramraz is reproduced below.

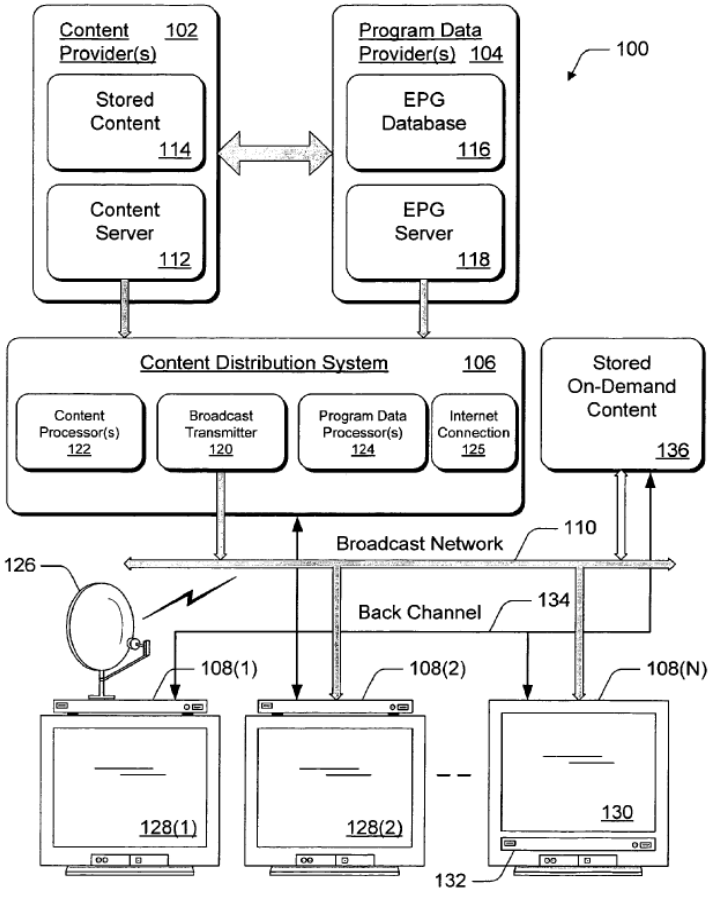

Figure 1 of Ramraz depicts a block diagram of an exemplary television entertainment system. *See* Ex. 1110, 1:61–63, 3:31–33. Television

entertainment system 100 includes one or more content providers 102, one or more program data providers 104, content distribution system 106, and multiple client devices 108(1), 108(2), 108(n) coupled to content distribution system 106 via broadcast network 110. *See id.* at 3:31–39. In a section entitled "Terminology Utilized in This Document," Ramraz discloses "[a] provider can refer to different contexts. For example, a content provider refers to a content source. Examples of content sources include, without limitation, Comcast and DirectTV." *Id.* at 3:1–4. In the same "Terminology Utilized in This Document" section, Ramraz discloses "[a]source (unqualified) refers to the source of a particular signal that is received by, for example, a client device. Sources can include, without limitation, analog cable, digital cable, satellite antenna, camcorders, VCRs, digital camera and the like." *Id.* at 2:56–60.

Content provider 102 includes stored content 114, and content server 112 that controls distribution of stored content 114 to continent distribution system 106. *See* Ex. 1110, 3:48–53. Program data provider 104 includes electronic program guide (EPG) database 116 and EPG server 118 that controls distribution of the published version of program data from program data provider 104 to content distribution system 106 using, for example, file transfer protocol (FTP) over TCP/IP network (e.g., Internet). *See id*. at 3:56–4:8. Content distribution system 106 includes broadcast transmitter 120, content processors 122, program data processors 124, and Internet connections 125. *See id.* at 4:12–15. System 100 also can include stored on-demand content 136 that can be streamed to client device 108. *See id.* at 5:35–41.

> Broadcast transmitter 120 broadcasts signals, such as cable television signals, across broadcast network 110. Broadcast network 110 can include a cable television network, RF, microwave, satellite, and/or data network, such as the Internet, and may also include wired or wireless media using any broadcast format or broadcast protocol. Additionally, broadcast network 110 can be any type of network, using any type of network topology and any network communication protocol, and can be represented or otherwise implemented as a combination of two or more networks. In at least some embodiments, at least portions of the broadcast network comprise the Internet.

Id. at 4:20–31.

Ramraz teaches that client devices 108 can be implemented in a number of ways. *See* Ex. 1110, 4:60–61. For example, client device 108(1) is a set-top box or satellite receiving device that receives broadcast content from a satellite-based transmitter via satellite dish 126, and is coupled to television 128(1). *See id.* at 4:61–67. Client device 108(2) is coupled to receive broadcast content from broadcast network 110 and provide the received content to television 128(2). *See id.* at 5:5–7. "[A]ny of the client devices can be connected to multiple different sources, such as those mentioned above in the 'Terminology' section." *Id.* at 5:23–25. Each client device 108 can run an EPG application that utilizes the program data and enables a viewer to navigate through an onscreen program guide and locate television shows and broadcast content of interest. *See id.* at 5:26–30.

Ramraz discloses several exemplary client devices including a client device having a tuner with an RF input connected to an antenna source, an S-video input connected to a satellite set top box and satellite source, and a composite input connected to digital cable set top box and cable source. *See* Ex. 1101, 6:46–61; Fig. 4; *see also id.* at 5:42–6:45, 6:62–9:18, Figs. 2, 3, 5

(disclosing other exemplary client devices). Ramraz discloses an electronic program guide that lists each channel as well as parenthetical information of the source such as "(Ant)" for antenna and "(Sat)" for satellite. *See* Ex. 1101, 10:50–56, Figs. 7, 12. Using the EPG, a viewer may highlight a program for viewing and click "OK" on the remote control, and in response to selecting the particular program on a particular channel, the client device will iterate through the list of all inputs linked to the particular line in the program guide and try to tune to each one. *See id.* at 11:14–27; *see also id.* at 8:26–30 (similar disclosure). If a viewer decides that they do not wish to view guide information associated with certain channels, the viewer can opt to have certain channels removed from the guide. *See id.* at 14:21–39.

2. Overview of Bayrakeri (Ex. 1111)

Bayrakeri discloses techniques to quickly and efficiently search a program guide database for desired programming. *See* Ex. 1111, 2:11–13. In one aspect, a user can create and modify a custom interactive program guide. *See id.* at 24:58–60, Fig. 21. In particular, a user can select a desired channel for inclusion in a custom IPG. *See id*. at 25:19–38, Fig. 21:2126.

3. Unpatentability of Claims 1, 5, 7, 8, and 9 over Ramraz and Bayrakeri

Petitioner contends that Ramraz teaches "a server resident on a network," as recited in claim 1, based on Ramraz's disclosure of a content distribution system 106 resident on Broadcast Network 110. *See* Pet. 24–26 (reproducing Ex. 1110, Fig. 1 with annotations, quoting Ex. 1110, 4:3–8, 4:32–37, 4:20–24, 4:46–48, 12:5–7, 5:14–15; citing Ex. 1110, 4:21–31, 4:54–59, 5:37–41, 9:29–31; Ex. 1106 ¶¶ 59–60). Petitioner asserts that Ramraz teaches "video content available from one or more multiple cable

system operators (MSOs)," as recited in claim 1, based on Ramraz's disclosures of cable television providers such as Comcast and satellite television providers, such as DirectTV. *See* Pet. 30–32 (quoting Ex. 1110, 2:56–60, 3:1–4; citing Ex. 1101, 6:20, 9:7–8; Ex. 1106 ¶¶ 65–67; Ex. 1107, 1–2; Ex. 1110, 2:56–60, 3:1–4, 9:35–40, 10:45–49, Fig. 12; Ex. 1112, 6, 8; Ex. 1113, 4, 5)); *see also id.* at 35, 40 (providing DirectTV and Comcast as examples of MSOs). Petitioner contends that Ramraz teaches "video content available from . . . one or more non-MSOs," as recited in claim 1, based on Ramraz's disclosures of sources of video content can include antenna sources such as channel 2 NBC, channel 3 ABC, and channel 4 KRON, and subscribers' camcorders, VCRs and digital cameras. *See id.* at 32–35 (quoting Ex. 1110, 9:35–38, 10:43–49; citing Ex. 1101, 10:31–40, Fig. 3; Ex. 1102, 463–464; Ex. 1105, 243:9–11; Ex. 1106 ¶¶ 68–71; Ex. 1110, 2:56–60, 3:1–6, 15:23–24, Figs. 7, 11, 12; Ex. 1117); *see also id.* at 35 (providing local television station providers and camcorders as examples of non-MSOs), 40 (providing antenna ("Ant") broadcast stations that provide local programming as an example of non-MSOs).

Petitioner contends that Ramraz teaches "a device capable of establishing and maintaining a connection with the network via a communications link," as recited in claim 1, based on Ramraz's disclosures of client devices 108, such as client device 108(2). *See* Pet. 35–37 (reproducing Ex. 1110, Fig. 1 with annotations; quoting Ex. 1110, 3:37–39, 5:5–6, 5:62–67; citing Ex. 1106 ¶ 72). Petitioner asserts that Ramraz teaches "an interactive program guide application installed on the device that provides a 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," based on Ramraz's disclosure of EPG 320 on client device 108 and disclosure of a program guide listing antenna channels, satellite channels, and video channels. *See id.* at 37–40 (reproducing Ex. 1110, Fig. 12 with annotations; quoting Ex. 1110, code (57), 3:64–67, 5:26–34, 7:5–7, 10:43–49, 14:22–27; citing Ex. 1106 ¶¶ 73–78; Ex. 1110, 10:40–11:13, Fig. 3:320).

Petitioner contends that Ramraz teaches "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," based on Ramraz's disclosures that a viewer may highlight a program and click "OK" or select a specific service and tune to it, and assertion that upon selecting a channel, the user receives streaming video programming from the source of the selected channel delivered over broadcast network 110. *See* Pet. 41–43 (quoting Ex. 1110, 5:37–41, 8:26–30, 11:14–20, citing Ex. 1106 ¶¶ 79–84; Ex. 1110, 4:20–36, 5:62–67, 11:14–20, 8:26–30, Fig. 1). According to Petitioner, content from content providers 102 is live broadcast television airing at specific time slots as shown in the program guide, and broadcast television is streamed by delivery in data packets over broadcast network 110, which may comprise the Internet. *See* Pet. 42 (citing Ex. 1110, 4:21–23, Fig. 12). In anticipation of an argument that the video content from various sources is not necessarily sent over the same network because Ramraz discloses other embodiments involving multiple tuners or separate inputs from various sources (citing Ex. 1110, 8:34–38), Petitioner asserts that Ramraz specifically discloses the use of broadcast network 110, which may be the Internet for transmitting the

video content. *See* Pet. 43 (quoting Ex. 1110, 5:14–15, 5:62–65; citing Ex. 1106 ¶ 83; Ex. 1110, 2:56–60, 3:1–6, 4:20–24, Fig. 2).

Petitioner does not rely on the teachings of Bayrakeri for teaching "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." *See* Pet. 41–44. Instead, Petitioner relies on the teachings of Ramraz as modified by Bayrakeri for teaching "wherein the application allows for the IPG to be configured by a user with respect to adding . . . channels from any one of the one or more MSOs or the one or more non-MSOs." *See id.* at 45–51.

Patent Owner contends that Petitioner fails to show that Ramraz teaches "wherein each of the channels is selectable for receiving only . . . streaming video programming from its respective . . . non-MSO source via the communications link and the network." *See* Prelim. Resp. 32–41. Specifically, Patent Owner contends that Ramraz does not teach that any of the alleged non-MSO channels are selectable for receiving only streaming video programming. *See id.* at 32. According to Patent Owner, antenna channels are received via antenna as radio waves over-the air, are broadcasted by station towers, and are not transmitted over a computer network. *See id.* at 33 (citing Ex. 2101 ¶ 81; Ex. 2106). Patent Owner also argues that transmitting television signals via radio waves over-the air is not streaming and is not via the Internet. *See id.* at 33–34 (reproducing Ex. 2106, 6; citing Ex. 2101 ¶ 81; Ex. 2104, 4; Ex. 2106, 1, 6; Ex. 2107), 40; *see also id.* at 38–40 (citing Pet. 36–37 identifying Petitioner's assertion that Ramraz's broadcast network 110 is the Internet). Patent Owner further contends that, based on Petitioner's evidence, none of Ramraz's three

antenna channels are selectable for receiving streaming video programming. In support of its arguments, Patent Owner directs attention to evidence to show that channel 4 (KRON) was an over-the air television station transmitting analog information. *See id.* at 35 (citing Ex. 1117).

We agree with Patent Owner's arguments. Petitioner does not direct us to evidence sufficient to demonstrate a reasonable likelihood that any of Ramraz's disclosed broadcast television antenna channels listed in the EPGs of Figures 7 and 12 (i.e., "2 NBC (Ant)," "3 ABC (Ant)," "4 KRON (Ant),") are selectable for receiving only streaming video programming via broadcast network 110. Instead, Petitioner's cited evidence discloses only: (1) highlighting a program on the EPG guide and clicking "OK" on a remote control, which also specifies the channel number and the associated source; (*see* Ex. 1110, 11:14–20); (2) navigating within the EPG and selecting a specific service and tuning to it (*see id.* at 8:26–30); (3) content processor 122 of content distribution system 106 processes content received from content provider 102 prior to transmitting the content across broadcast network 110 (*see id*. at 4:32–34); (4) client device 108(2) is coupled to receive broadcast content from broadcast network 110 (*see id*. at 5:5–7); (5) client device 108 receives one or more broadcast signals 210 from one or more broadcast sources including, among other exemplary sources, broadcast network 110 (*see id*. at 5:62–67); (6) broadcast network 110 can include, among other exemplary networks, a data network such as the Internet (*see id*. at 4:21–23, 4:29–31); and (7) stored content from on-demand stored content 136 may be streamed to a corresponding client device 108 (*see id*. at 5:37–41; Fig. 1). Consistent with Patent Owner's arguments that Ramraz's antenna channels are received via antenna as radio

waves over-the air, Ramraz discloses: (1) responsive to a selection of a program and channel displayed on the EPG (*see* Ex. 1110, Figs. 7, 12), the client device *tunes* to the selected input (*see id*. at 8:26–30, 11: 21–24; 11:60–66); and (2) the client device includes a tuner which may include an input connected to an antenna source (*see id*. at 8:34–61, 9:35–38, 9:64–67, 14:52–64, Figs. 3, 4).

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 ¶¶ 79–84; 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 ¶¶ 79–84, *with* Pet. 41–44. Aside from citations to the disclosures of Ramraz, discussed immediately above, Dr. Lippman does not provide additional underlying facts to support his testimony that Ramraz teaches "wherein each of the channels is selectable for receiving only . . . streaming video programming from its respective . . . non-MSO source via the communications link and the network."

We also are persuaded by Patent Owner's argument that Petitioner fails to show that Ramraz teaches "wherein each of the channels is selectable for receiving only . . . streaming video programming from its respective . . . non-MSO source via the communications link and the network," based on Petitioner's assertions that Ramraz's disclosures of a camcorder, VCR, and digital camera are non-MSO sources. *See* Prelim. Resp. 32, 35–37, 40–41. In particular, we agree with Patent Owner that Ramraz discloses the camcorder, VCR, and digital camera are connected to client devices 108 via

an S-video cable or composite cable, and signals therefrom do not pass through content provider 102 and over broadcast network 110. *See id.* at 32 (citing Ex. 2101 ¶ 97), *id.* at 35–37 (reproducing Ex. 1101 with annotations, citing Ex. 1110, 15:8–20; Ex. 2101 ¶ 97), *id.* at 40–41 (citing Ex. 1110, 15:8–20).

Based on the record before us, Petitioner has not set forth evidence sufficient to demonstrate a reasonable likelihood that the combination of Ramraz and Bayrakeri disclose, teach, or suggest "wherein each of the channels is selectable for receiving only . . . streaming video programming from its respective . . . non-MSO source via the communications link and the network," as recited in claim 1. Due to the dependency of claims 5 and 7–9 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 Ramraz and Bayrakeri disclose, teach, or suggest all of the limitations of claims 5 and 7–9. Accordingly, based on the record before us, Petitioner has not established a reasonable likelihood that it would prevail in showing claims 1, 5, and 7–9 are unpatentable over Ramraz and Bayrakeri.

4. Unpatentability of Claims 3, 4, and 6 over Ramraz, Bayrakeri and Additional Art

Claims 3, 4, and 6 depend from claim 1. As applied by Petitioner, the teachings of Furlong, Bednarek, and Calderone do not remedy the deficiencies of Ramraz and Bayrakeri discussed in the preceding section addressing claim 1. *See* Pet. 54–67. 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 Ramraz, Bayrakeri, and Furlong, (2) claim 4 is unpatentable over Ramraz, Bayrakeri, and Bednarek; and (3) claim 6 is unpatentable over Ramraz, Bayrakeri, and Calderon.

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. 49–50. Petitioner and Patent Owner filed additional briefing to address discretion to deny under 35 U.S.C. § 314. *See* Papers 10, 11. We need not reach or address the parties' arguments because, as demonstrated in the 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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