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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

ROVI TECHNOLOGIES CORP.,
Patent Owner.

Case IPR2017-00994
Patent 6,725,281 B1

Before KEVIN F. TURNER, MICHAEL R. ZECHER, and LYNNE E. PETTIGREW, *Administrative Patent Judges*.

ZECHER, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner, Comcast Cable Communications, LLC ("Comcast"), filed a Petition requesting an *inter partes* review of claims 7–22 and 74 of U.S. Patent No. 6,725,281 B1 (Ex. 1601, "the '281 patent"). Paper 2 ("Pet."). Patent Owner, Rovi Technologies Corp. ("Rovi"), filed a Preliminary Response. Paper 6 ("Prelim. Resp.").

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition shows "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." Taking into account the arguments presented in Rovi's Preliminary Response, we conclude that the information presented in the Petition does not establish that there is a reasonable likelihood that Comcast would prevail in challenging claims 7–22 and 74 of the '281 patent as unpatentable under 35 U.S.C. § 103(a). We, therefore, *deny* the Petition.

A. Related Matters

The '281 patent is involved in the following district court cases: (1) *Rovi Guides, Inc. v. Comcast Corp.*, No. 2:16-cv-00321 (E.D. Tex.), which has been transferred to the U.S. District Court for the Southern District of New York and is pending as *Rovi Guides, Inc. v. Comcast Corp.*, No. 1:16-cv-09278 (S.D.N.Y.); and (2) *Comcast Corp. v. Rovi Corp.*, No. 1:16-cv-03852 (S.D.N.Y.). Pet. 2; Paper 3, 2–3. The '281 patent also was asserted in a district court case captioned *Microsoft Corp. v. TiVo, Inc.*, No. 5:10-cv-00240-LHK (N.D. Cal.), which closed on March 22, 2012. Pet. 2–3; Paper 3, 3. In addition, the '281 patent was the subject of *Ex parte*

Reexamination No. 90/011,541, in which a reexamination certificate issued on October 26, 2012. Pet. 2 (citing Ex. 1626); Paper 3, 4.

In addition to this Petition, Comcast filed six other petitions challenging the patentability of claims 7–22 and 74 of the '281 patent (Cases IPR2017-00988, IPR2017-00989, IPR2017-00990, IPR2017-00991, IPR2017-00992, and IPR2017-00993). Pet. 3; Paper 3, 2. Comcast also filed other petitions challenging the patentability of certain subsets of claims in several patents owned by Rovi.

B. The '281 Patent

The '281 patent, titled "Synchronization of Controlled Device State Using State Table and Eventing in Data-Driven Remote Device Control Model," issued April 20, 2004, from U.S. Patent Application No. 09/432,853, filed on November 2, 1999. Ex. 1601, at [54], [45], [21], [22]. The '281 patent also claims the benefit of U.S. Provisional Application No. 60/139,137, filed on June 11, 1999, and U.S. Provisional Application No. 60/160,235, filed on October 18, 1999. *Id.* at [60].

The '281 patent generally relates to dynamic connectivity among distributed devices or services and, in particular, to providing the capability to access device-specific or service-specific operational information to perform remote automation and control of embedded computing devices using a data-driven remote programming model. Ex. 1601, 1:13–19. The '281 patent discloses that, in many conventional scenarios, pervasive networked computing involves ad hoc remote control of the operational functionality of various devices from a single device with user data input/output capabilities. *Id.* at 1:52–55. In these scenarios, it is desirable to

share the user interface experience of the control panel of the single device with other control devices. *Id.* at 1:61–65.

The ’281 patent purportedly accomplishes this by allowing controlled devices in a device control model to maintain a state table representative of their operational states. Ex. 1601, 1:66–2:1. Each controlled device subscribes to notifications of state table changes, such that whenever there is a change to its operational state, the controlled device updates its local copy of the state table and notifies all other controlled devices using an event model. *Id.* at 2:7–16. This synchronization of the operational state of each controlled device among all the controlled devices allows a user to interact appropriately with the current state of a particular controlled device (e.g., by “avoiding issuing a ‘toggle power on/off’ command when the controlled device’s power already is on”). *Id.* at 2:29–32. In addition to maintaining and synchronizing the operational state of each controlled device, the ’281 patent discloses obtaining the following: (1) presentation data that define the presentation of the remote user interface of each controlled device; and (2) device control protocol data that define commands and protocols affecting control over each controlled device. *Id.* at 2:1–7.

Figures 1 and 2, reproduced below, illustrate block diagrams of a device architecture per Universal Plug and Play (“UPnP”) using user control points, controlled devices, and bridges for connectivity between the user control points and controlled devices. Ex. 1601, 2:54–57.

FIG. 1

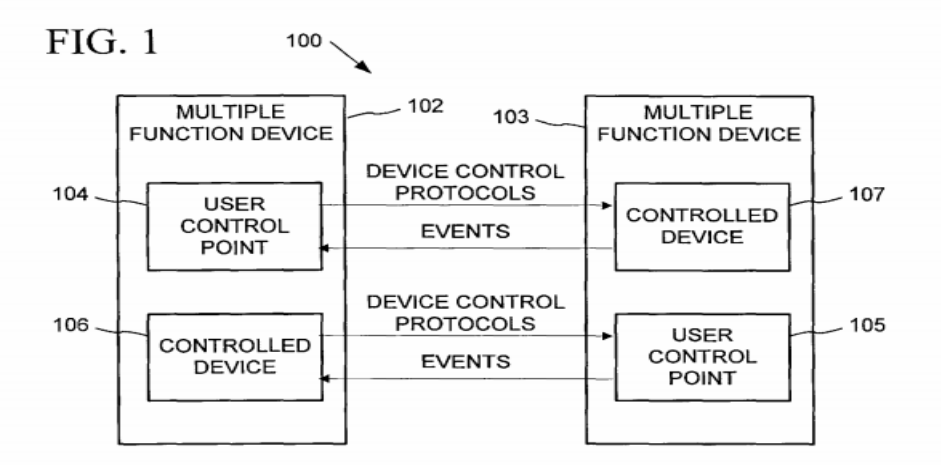
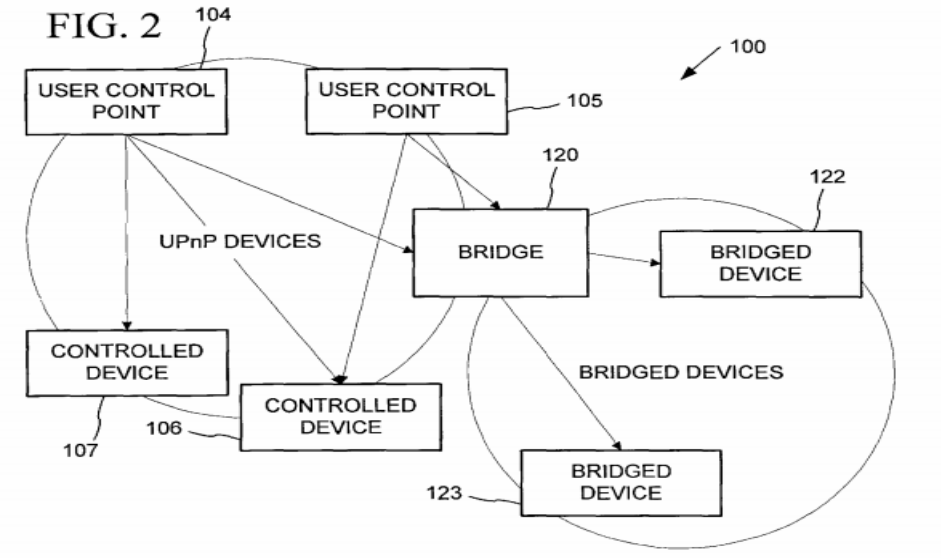


FIG. 2



As shown in Figures 1 and 2 reproduced above, architecture 100 includes User Control Points 104 and 105, Controlled Devices 106 and 107, and Bridge 120. *Id.* at 12:47–50. The functionality of these components can be packaged into physical entities (e.g., multiple function devices 102 and 103) in any combination. *Id.* at 12:52–55. Controlled Devices 106 and 107 are responsible for storing the state of Services, whereas User Control Points 104 and 105 synchronize to the state on the Controlled Devices and share each state directly among themselves. *Id.* at 12:61–64. Each Controlled

Device 106 and 107 stores its current state of Service in Service State Table ("SST") 230 (illustrated in Figure 3). *Id.* at 12:57–63.

According to the '281 patent, SST 230 may be used to represent the operational mode of the device or act as an information source or sink. Ex. 1601, 13:61–63, 16:47–49. For instance, the SST of VCR 254 (illustrated in Figure 4) could represent the current transport mode, tuner channel selection, input and output switch selections, audio and video decoding format, and current timer program. *Id.* at 13:63–66.

C. Challenged Claims

Claims 7, 11, 17, and 18 (not subject to reexamination), as well as claim 20 (amended during reexamination), are independent. Independent claims 7 and 11 are each directed to a distributed computing network, independent claims 17 and 18 are each directed to a computer readable software carrying medium having computer software thereon for implementing the same, and independent claim 20 is directed to a peer networking state eventing and control protocol method for implementing the same. Claims 8–10 directly depend from independent claim 7; claims 12–16 directly depend from independent claim 11; claim 19 directly depends from independent claim 18; and claims 21, 22, and 74 directly depend from independent claim 20. Independent claim 7 is illustrative of the challenged claims and is reproduced below:

> 7. In a distributed computing network having a controlled computing device, a state table maintained by the controlled computing device and representing an operational state of the controlled computing device, a user controller device having user input/output capability for presenting a user perceptible device control interface for remote user interaction

with the controlled computing device and communicating with the controlled computing device via a device control protocol to effect remote operational control of the controlled computing device, a user control point module in the user controller device operating to obtain the state table of the user controller device and subscribe to change notifications of the state table, and an event source module operating according to an eventing model to distribute the change notifications to any subscribing user controller device upon a change to the operational state of the controlled computing device, so as to thereby synchronize the user perceptible device control interface with the changed operational state among said any subscribing user controller device, a method of maintaining data representing a current state of the controlled computing device at the user controller device, the method comprising:

responsive to a controlled device state subscription request of the user controller device per a subscription eventing model, distributing an initial controlled computing device state event having a predefined initial sequence number and data defining a present state of the controlled computing device to the user controller device;

upon changes in the controlled device state, distributing controlled computing device state update events having sequence numbers assigned according to a sequential order following the predefined initial sequence number and data defining said changes to the user controller device; and

in response to a renewed controlled device state subscription request, recommencing distributing the initial controlled computing device state event and controlled computing device state update events to the user controller device so as to permit the user controller device to reinitialize to the controlled computing device's present state upon failure to receive the controlled computing device state update events in sequential order of their assigned sequence numbers.

Ex. 1601, 57:18–62.

D. Prior Art References Relied Upon

Comcast relies upon the prior art references set forth in the table below:

Inventor[1]	**Patent or Publication No.**	**Relevant Dates**	**Exhibit No.**
Beasley	U.S. Patent No. 5,699,275	issued Dec. 16, 1997, filed Apr. 12, 1995	1604
Ludtke ’069	U.S. Patent No. 6,421,069 B1	issued July 16, 2002, filed June 4, 1998	1609
Thomas	U.S. Patent No. 5,151,899	issued Sept. 29, 1992, filed Feb. 11, 1991	1611

E. Asserted Grounds of Unpatentability

Comcast challenges claims 7–22 and 74 of the ’281 patent based on the asserted grounds of unpatentability (“grounds”) set forth in the table below. Pet. 4, 24–69.

References	**Basis**	**Challenged Claim(s)**
Ludtke ’069	§ 103(a)	20 and 74
Ludtke ’069 and Beasley	§ 103(a)	7, 9–19, 21, and 22
Ludtke ’069, Beasley, and Thomas	§ 103(a)	8

II. ANALYSIS

A. Claim Construction

In an *inter partes* review proceeding, claim terms of an unexpired patent are given their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b);

[1] For clarity and ease of reference, we only list the first named inventor.

Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131, 2142–46 (2016) (upholding the use of the broadest reasonable interpretation standard as the claim construction standard to be applied in an *inter partes* review proceeding). Under the broadest reasonable interpretation standard, claim terms are generally given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art, in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). An inventor may provide a meaning for a term that is different from its ordinary and customary meaning by defining the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

In its Petition, Comcast proposes constructions for the following claim terms or phrases: (1) "a controlled computing device" (all challenged claims); (2) "a state table . . . representing an operational state of the controlled computing device" (all challenged claims); (3) "a user controller device" (claims 7–16)/"control point computing device" (claims 17–22 and 74); (4) "a user control point module" (all challenged claims); (5) "an eventing model" (all challenged claims); (6) "embedded computing device" (no challenged claims); and (7) "a peer networking state eventing and control protocol method for effecting state-concurrent multi-master control of a controlled computing device by a plurality of control point computing devices communicating on a data communications network" (claims 17, 20–22, and 74). Pet. 5–9. In response, Rovi contends that Comcast improperly construes the following claim terms or phrases: (1) "a controlled computing device"; (2) "a state table . . . representing an operational state of the controlled computing device"; (3) "a user control point module"; and (4) "an

eventing model." Prelim. Resp. 9–17. For purposes of this Decision, we determine that the only claim phrase requiring construction is "a state table . . . representing an operational state of the controlled computing device," and only to the extent necessary to resolve the dispositive issue discussed below—namely, whether Ludtke '069 properly accounts for this particular limitation. *See, e.g., Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (explaining that only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy).

In its Petition, Comcast contends that the broadest reasonable interpretation of the claim phrase "a state table . . . representing an operational state of the controlled computing device" is "a data structure regarding the current state of a device." Pet. 6 (citing Ex. 1612 ¶ 62). To support its proposed construction, Comcast directs us to multiple disclosures in the specification of the '281 patent, including its description of a Device/Service State Table ("DST/SST") 230 as a table with rows containing values that represent the current electrical, mechanical, and/or logical state of a controlled device. *Id.* at 5–6 (citing Ex. 1601, 8:53–56, 16:12–18, 28:41–43, Fig. 3, item 230).

In response, Rovi contends that the plain language of the claim phrase "a state table . . . representing an operational state of the controlled computing device" requires the following: (1) the claimed "state table" must be a table, which requires at least an addressable data structure of rows and columns—not just any form of data structure (e.g., not a record, a field in a record, a linked list, a stack, etc.); and (2) the contents of the claimed "state table" must represent the operational state of the controlled device. Prelim.

Resp. 10–11 (citing Ex. 1601, 2:2–7, 2:29–32, 8:53–56, 16:11–56). According to Rovi, Comcast's proposed construction ignores both requirements. *Id.* at 11. Rovi argues that Comcast's proposal to use the term "data structure" rather than "table" ignores the requirement that the claimed "state table" is, indeed, a table. *Id.* Rovi also disagrees with Comcast's assertion that its proposed construction may be satisfied by any information that describes the physical controls of a target device. *Id.* at 11–12 (citing Pet. 5–6, 11, 26). Rovi asserts information that merely describes the physical status/appearance of a control object (e.g., whether or not a button has been pressed) or display of an interface, tells us little, if anything, about the underlying operational state of the controlled device. *Id.* at 12–13.

The parties' dispute regarding the claim phrase "a state table . . . representing an operational state of the controlled computing device" turns, at least in part, on the scope and meaning of the term "state table." In the specification of the '281 patent, the terms SST and DST are used interchangeably to describe item 230 illustrated in Figure 3 (i.e., a state table). *Compare* Ex. 1601, 13:57–60, *with id.* at 28:41–49. The specification explicitly defines an SST as "[a] logical table consisting of rows of [Variable, Type, Legal Values, Default Value, Current Value] that represents the current electrical, mechanical, and/or logical state of a Service." *Id.* at 8:53–56. By identifying the term SST amongst the list of terms that are discussed following the statement "[t]he detailed description that follows uses the terminology *defined* below" (*id.* at 6:20–21 (emphasis added)), the specification sets forth an explicit definition for the term SST with reasonable clarity, deliberateness, and precision. *See Paulsen*, 30 F.3d at 1480.

Notably, nothing in the specification of the ’281 patent contradicts the definition of the term SST identified above or suggests another meaning for this term. For instance, the specification discloses that “SST layouts are logically specified in terms of rows of [Variable, Type, Legal Values, Default Value]. The actual instances of a SST would also include a Current Value field in every row.” Ex. 1601, 14:37–40. The specification also discloses the following:

> [an SST] logically consists of rows of: Variable, Type, Legal Values, Default Value, Current Value[.] Although entries of the [SST] in UPnP consist of these five items, the state table alternatively can contain fewer or additional items. Generally, each entry will minimally consist of a Variable name or identifier, and its current value.

Id. at 16:12–18. According to the specification, representing Services in this way “ensures that the state of a Service is easily available in a common way to multiple User Control Points.” *Id.* at 16:44–46.

In summary, we determine that for purposes of this Decision the broadest reasonable interpretation of the claim term “state table” is “a logical table consisting of rows of at least a variable identifier and a current value that represent the current electrical, mechanical, and/or logical state of a service or device,” which is consistent with the explicit definition of the term SST and other descriptions of a state table in the specification of the ’281 patent. We further clarify that, based on the plain language of independent claims 7, 11, 17, 18, and 20, the claimed “state table” includes content that “represent[s] an operational state of the controlled computing device.”

B. Obviousness Over the Teachings of Ludtke '069

Comcast contends that claims 20 and 74 of the '281 patent are unpatentable under § 103(a) over the teachings of Ludtke '069. Pet. 24–35. Comcast explains how Ludtke '069 teaches or suggests the subject matter of each challenged claim. *Id.* Comcast also relies upon the Declaration of Dr. Andrew Lippman to support its positions. Ex. 1612 ¶¶ 70–100. On this record, we are not persuaded that Comcast demonstrates that Ludtke '069 properly accounts for "a state table . . . representing an operational state of the controlled computing device," as recited in independent claim 20.

We begin our analysis with the principles of law that generally apply to a ground based on obviousness, followed by a brief overview of Ludtke '069, and then we address the dispositive issue with respect to independent claim 20.

1. Principles of Law

A claim is unpatentable under § 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 said 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;[2] and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations). *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). We analyze this asserted ground based on obviousness with the principles identified above in mind.

2. Ludtke '069 Overview

Ludtke '069 generally relates to including self-describing information within a device that describes the physical attributes, features, capabilities, and operation of the device. Ex. 1609, at [57], 1:19–24. The self-describing information is embedded within read-only memory within the device and may be read by other devices coupled thereto in order to present a graphical user interface through which the device may be controlled remotely by a user. *Id.* at 3:19–24, 9:32–35. The self-describing information includes, amongst other things, the current status of the device. *Id.* at 9:35–36.

In one embodiment where the aforementioned device is a video cassette recorder ("VCR"), Ludtke '069 discloses displaying status information that includes a counter representing a count from a particular point on a video tape within VCR 14. Ex. 1609, 11:11–13, Figs. 1, 9. This count is updated by signals sent from VCR 14 to computer system 18 during the flow of the data stream from video camera 10 to VCR 14. *Id.* at 11:17–21. The status information of VCR 14 also may include operational

[2] Relying upon the testimony of Dr. Lippman, Comcast offers an assessment as to the level of skill in the art as of June 11, 1999, which is the earliest effective filing date on the face of the '281 patent. Pet. 9–10 (citing Ex. 1612 ¶ 23). To the extent necessary, and for purposes of this Decision, we accept the assessment offered by Comcast as it is consistent with the '281 patent and the asserted prior art.

commands sent by computer system 18 to VCR 14 to power on and, if necessary, enter a record mode. *Id.* at 10:23–30.

3. Claim 20

Independent claim 20 recites "a state table . . . representing an operational state of the controlled computing device." Ex. 1601, *Ex parte* Reexamination Certificate, 2:32–34. With respect to this limitation, Comcast asserts that Ludtke '069 teaches a VCR that maintains "self-describing information," including status information, as well as a counter representing the count from a point on the video tape. Pet. 26 (Ex. 1609, 9:32–36, 11:13–21). According to Comcast, the counter teaches the claimed "operational state of the controlled computing device" because it indicates a video tape is present in the VCR. *Id.* Comcast argues that Ludtke '069 may be considered to teach the claimed "state table" because it discloses maintaining numerous entries of the operational status of the VCR in its self-describing information. *Id.* (citing Ex. 1612 ¶ 73).

Comcast further argues that, to the extent Ludtke '069 does not expressly describe state data in the form of a table, it would have been obvious to one of ordinary skill in the art to put such data in a table. Pet. 27 (citing Ex. 1612 ¶ 74). Specifically, Comcast contends that "[t]he format of the representation of the state data is a matter of programming style," and one of ordinary skill in the art "would have understood that the design of the state table is a matter of design choice to organize the status information for ease of use." *Id.* In addition, Comcast contends that a person of ordinary skill in the art would have "understood that any data structure format would work in the same way as a table with rows and column values with no

unexpected results." *Id.* Therefore, according to Comcast, "[one of ordinary skill in the art] . . . would have found it obvious to use any data structure format that maintains the same operational state information of the controlled device, such as the self-describing information data structure found in Ludtke '069." *Id.*

On this record, we are not persuaded Comcast has shown that Ludtke '069 teaches or suggests "a state table . . . representing an operational state of the controlled computing device," as recited in independent claim 20. First, we agree with Rovi that Comcast fails to establish that the "self-describing information" in Ludtke '069 teaches a "state table." *See* Prelim. Resp. 18. As explained above in Section II.A, we disagree with Comcast's proposed construction of "state table" as simply "a data structure regarding the current state of a device." Instead, we have construed the term "state table" for purposes of this Decision as "a logical table consisting of rows of at least a variable identifier and a current value that represent the current electrical, mechanical, and/or logical state of a service or device." Therefore, even if we accept Comcast's unsupported premise that entries of the VCR's operational status in the self-describing information are in the form of a data structure in Ludtke '069, Comcast fails to show that such a data structure is a "state table" as recited in independent claim 20 (i.e., a logical table consisting of rows of at least a variable identifier and a current value).

On the current record, we also agree with Rovi that Comcast's other arguments are conclusory and do not establish that Ludtke '069 renders obvious "a state table . . . representing an operational state of the controlled computing device," as recited in independent claim 20. *See* Prelim. Resp.

18–19 (citing Pet. 27). Comcast's contention that the format of state data "is a matter of design choice to organize the status information for ease of use" does not support an obviousness conclusion because it fails to explain why a person of ordinary skill in the art would have organized any of the self-describing information in Ludtke '069 as a state table containing rows and columns. *See Cutsforth, Inc. v. MotivePower, Inc.*, 636 F. App'x 575, 578 (Fed. Cir. 2016) (non-precedential) ("Merely stating that a particular placement of an element is a design choice does not make it obvious. [Petitioner] must offer a reason for why a person of ordinary skill in the art would have made the specific design choice.").

We also are unpersuaded by Comcast's contention that a person of ordinary skill in the art would have understood that any data structure format would work in the same way as a table with rows and column values with no unexpected results and, therefore, would have found it obvious to use any data structure format that maintains the operational state information of the controlled device. *See* Pet. 27. For support, Comcast cites only Dr. Lippman's declaration testimony, which is not supported with factual evidence and provides no analysis beyond the conclusory assertions in the Petition. *See* Ex. 1612 ¶ 74. Moreover, Comcast's argument that it would have been obvious to use any data structure, "such as the self-describing information data structure found in Ludtke '069," does not address the relevant question for an obviousness analysis—namely, whether a person of ordinary skill in the art would have implemented Ludtke '069's self-describing information in the form of a state table, as we have construed the term.

In summary, Comcast has not shown sufficiently that Ludtke '069 accounts for "a state table . . . representing an operational state of the controlled computing device," as recited in independent claim 20. Accordingly, Comcast has not demonstrated a reasonable likelihood that it will prevail on its assertion that the subject matter of this independent claim would have been obvious over the teachings of Ludtke '069.

4. Claim 74

By virtue of its dependency, claim 74 includes the same limitations as independent claim 20. Therefore, for the same reason discussed above with respect to independent claim 20, Comcast has not demonstrated a reasonable likelihood that it will prevail on its assertion that the subject matter of dependent claim 74 would have been obvious over the teachings of Ludtke '069.

C. Obviousness Over the Combined Teachings of Ludtke '069 and Beasley

Comcast contends that claims 7, 9–19, 21, and 22 of the '281 patent are unpatentable under § 103(a) over the combined teachings of Ludtke '069 and Beasley. Pet. 19–22, 35–69. Comcast explains how this proffered combination teaches or suggests the subject matter of each challenged claim, and provides reasoning as to why one of ordinary skill in the art would have been prompted to modify or combine the references' respective teachings. *Id.* Comcast also relies upon the Declaration of Dr. Lippman to support its positions. Ex. 1612 ¶¶ 102–192. On this record, we are not persuaded that Comcast demonstrates that Ludtke '069 properly accounts for "a state table . . . representing an operational state of the controlled computing device," as recited in each of independent claims 7, 11, 17, and 18.

1. Claims 7, 11, 17, and 18

Each of independent claims 7, 11, 17, and 18 recites, in relevant part, "a state table . . . representing an operational state of the controlled computing device." Ex. 1601, 57:19–21, 58:6–8, 59:5–7, 59:60–62. In its Petition, Comcast relies upon essentially the same analysis discussed above with respect to independent claim 20 to account for this particular limitation. *Compare* Pet. 26–27, *with id.* at 36, 45, 55, 60. Comcast does not apply the teachings of Beasley in such a way that remedies the deficiencies in Ludtke '069 identified above. Therefore, for the same reasons discussed above, Comcast has not shown sufficiently that the combined teachings of Ludtke '069 and Beasley account for "a state table . . . representing an operational state of the controlled computing device," as recited in each of independent claims 7, 11, 17, and 18. Accordingly, Comcast has not demonstrated a reasonable likelihood that it will prevail on its assertion that the subject matter of these independent claims would have been obvious over the combined teachings of Ludtke '069 and Beasley.

5. Claims 9, 10, 12–16, 19, 21, and 22

By virtue of their dependency, claims 9, 10, 12–16, 19, 21, and 22 include the same limitations as their underlying base claims. Therefore, for the same reason discussed above with respect to independent claims 7, 11, 17, and 18, Comcast has not demonstrated a reasonable likelihood that it will prevail on its assertion that the subject matter of dependent claims 9, 10, 12–16, 19, 21, and 22 would have been obvious over the combined teachings of Ludtke '069 and Beasley.

D. Obviousness Over the Combined Teachings of Ludtke '069, Beasley, and Thomas

Comcast contends that claim 8 of the '281 patent is unpatentable under § 103(a) over the combined teachings of Ludtke '069, Beasley, and Thomas. Pet. 70–71. By virtue of its dependency, claim 8 includes the same limitations as independent claim 7. Therefore, for the same reason discussed above with respect to independent claim 7, Comcast has not demonstrated a reasonable likelihood that it will prevail on its assertion that the subject matter of dependent claim 8 would have been obvious over the combined teachings of Ludtke '069, Beasley, and Thomas.

III. CONCLUSION

Taking into account the arguments presented in Rovi's Preliminary Response, we conclude that the information presented in the Petition does not demonstrate that there is a reasonable likelihood that Comcast will prevail in challenging claims 7–22 and 74 of the '281 patent as unpatentable under § 103(a).

IV. ORDER

In consideration of the foregoing, it is ORDERED that the Petition is DENIED and no trial is instituted.

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