

on further investigation, additional information obtained through discovery, and in response to any amended or supplemental allegations of infringement by Touchstream. Moreover, the claim construction process is ongoing, and Comcast reserves the right to revise this Preliminary Election in light of the Court’s claim construction ruling. *See* P.R. 3-6(a)(2). Finally, Comcast reserves the right to revise this Preliminary Election should Touchstream dispute that any of the references below qualifies as prior art, including based on public availability or the priority date of the asserted prior art or claims.

I. PRIOR ART REFERENCES AND SYSTEMS FOR PURPOSES OF ANTICIPATION AND OBVIOUSNESS

Comcast preliminarily elects the following prior art references and systems that render the Asserted Claims invalid under 35 U.S.C. §§ 102 and/or 103:

1. U.S. Patent No. 9,276,921 entitled, “System and Method for Establishing a Communication Session,” to Birkler et al. (Mar. 1, 2016) (“Birkler”)
2. U.S. Patent Application Publication No. 2004/0078812 entitled, “Method and Apparatus for Acquiring Media Services Available from Content Aggregators,” to Calvert (Apr. 22, 2004) (“Calvert”)
3. U.S. Patent No. 9,490,998 entitled, “Network-Based Remote Control,” to Danciu et al. (Nov. 8, 2016) (“Danciu”)
4. U.S. Patent No. 8,918,812 entitled, “Method of Sizing an Embedded Media Player Page,” to Hayward (Dec. 23, 2014) (“Hayward”)
5. U.S. Patent Application Publication No. 2009/0298535 entitled, “Smart Phone as Remote Control Device,” to Klein et al. (Dec. 3, 2009) (“Klein”)

6. U.S. Patent No. 10,785,027 entitled, “System and Methods for Accessing and Controlling Media Stored Remotely,” to Livingston et al. (Sept. 22, 2020) (“Livingston”)
7. U.S. Patent No. 9,294,800 entitled, “Intelligent Remote Control,” to McMahon et al. (Mar. 22, 2016) (“McMahon”)
8. U.S. Patent Application Publication No. 2011/0191677 entitled, “Methods, Systems, and Computer Program Products for Controlling Play of Media Streams,” to Morris (Aug. 4, 2011) (“Morris ’677”)
9. U.S. Patent Application Publication No. 2010/0241699 entitled, “Device-Based Control System,” to Muthukumarasamy et al. (Sept. 23, 2010) (“Muthukumarasamy”)
10. U.S. Patent No. 8,396,055 entitled, “Methods and Apparatus for Enabling Media Functionality in a Content-Based Network,” to Patel et al. (Mar. 12, 2013) (“Patel”)
11. U.S. Patent No. 8,660,545 entitled, “Responding to a Video Request by Displaying Information on a TV Remote and Video on the TV,” to Redford et al. (Feb. 25, 2014) (“Redford”)
12. Xfinity TV Remote Mobile Application system developed by Comcast

II. BACKGROUND REFERENCES AND SYSTEMS

For any references and systems identified in Defendants’ Invalidity Contentions, but not specifically identified above, Comcast reserves the right to rely on such references and systems as “evidence going to both the state of the art and the secondary considerations bearing on obviousness.” *Allergan, Inc. v. Teva Pharms. USA, Inc.*, No. 2:15-CV-1455-WCB, 2017 WL

11807449, at *6 (E.D. Tex. Aug. 3, 2017). Likewise, such additional references may also provide extrinsic evidence of a motivation to combine references identified above.

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COUNSEL FOR COMCAST DEFENDANTS,

/s/ David J. Lisson

Deron Dacus (State Bar No. 00790553)
THE DACUS FIRM, P.C.
821 ESE Loop 323, Suite 430
Tyler, TX 75701
Tel: (903) 705-1117
Fax: (903) 581-2543
ddacus@dacusfirm.com

Ashok Ramani (CA Bar No. 200020)
David J. Lisson (CA Bar No. 250994)
James Y. Park (CA Bar No. 343659)
Micayla Hardisty (CA Bar No. 333246)
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, CA 94025
ashok.ramani@davispolk.com
david.lisson@davispolk.com
james.park@davispolk.com
micayla.hardisty@davispolk.com

Alena Farber (NY Bar No. 5896170)
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
alena.farber@davispolk.com

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2024 true and correct copies of the foregoing COMCAST DEFENDANTS' PRELIMINARY ELECTION OF ASSERTED PRIOR ART were served upon the following as indicated:

SHOOK HARDY & BACON LLP
Robert H. Reckers
Andrew M. Long
Meagan Janee Mitchell
Anita Liu
600 Travis Street, Suite 3400
Houston, TX 77002
rreckers@shb.com
amlong@shb.com
mjmittell@shb.com
aliu@shb.com

Ryan Dykal
2555 Grand Blvd.
Kansas City, MO 64108
rdykal@shb.com

Counsel for Plaintiff Touchstream Technologies, Inc.

Deron R. Dacus
THE DACUS FIRM, PC
821 ESE Loop 323, Suite 430
Tyler, TX 75701
ddacus@dacusfirm.com

ARNOLD & PORTER KAYE SCHOLER LLP
Dina M. Hayes
70 West Madison Street, Suite 4200
Chicago, IL 60602
dina.hayes@arnoldporter.com

Daniel L. Reisner
David Benyacar
Elizabeth A. Long
Melissa Brown
Robert Stout
250 West 55th Street
New York, NY 10019
daniel.reisner@arnoldporter.com
david.benyacar@arnoldporter.com
elizabeth.long@arnoldporter.com
melissa.brown@arnoldporter.com
robert.stout@arnoldporter.com

Counsel for Charter Defendants

- ☒ Via Email
- ☐ Via Overnight Courier
- ☐ Via Hand Delivery
- ☐ Via First Class Mail

- ☒ Via Email
- ☐ Via Overnight Courier
- ☐ Via Hand Delivery
- ☐ Via First Class Mail

/s/ Angela Quach

Angela Quach
Senior Litigation Paralegal