IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TOUCHSTREAM TECHNOLOGIES, INC., Plaintiff, v. CHARTER COMMUNICATIONS, INC. et al., Defendants.	§	Lead Case No. 2:23-cv-00059-JRG Member Case No. 2:23-cv-00062-JRG
TOUCHSTREAM TECHNOLOGIES, INC., Plaintiff, v. COMCAST CABLE COMMUNICATIONS, LLC, d/b/a XFINITY, et al., Defendants.	§	

COMCAST DEFENDANTS' PRELIMINARY ELECTION OF ASSERTED PRIOR ART

Pursuant to the Court's Order Focusing Patent Claims and Prior Art to Reduce Costs (Dkt. 84) and the Docket Control Order (Dkt. 71), Defendants Comcast Cable Communications, LLC, Comcast Corporation, Comcast Cable Communications Management, LLC, and Comcast of Houston, LLC (together, "Comcast"), make the following Preliminary Election of Asserted Prior Art (the "Preliminary Election").

This Preliminary Election is made subject to the Court's Order and the Local Patent Rules of this Court. It is based on information available to date to Comcast upon reasonable investigation and the claims currently asserted by Plaintiff Touchstream Technologies, Inc. ("Touchstream").[1] Comcast expressly reserves the right to revise this Preliminary Election based

[1] The Third Supplemental Disclosure of Asserted Claims and Infringement Contentions to Comcast Defendants served by Touchstream on February 26, 2024, asserts the following claims: claims 1, 2, 5, 7, 8 and 9 of U.S. Pat. No. 8,356,251 ("the '251 Patent"); claims 12, 13, 14, 16 of U.S. Pat. No. 11,048,751 ("the '751 Patent"); and claims 17, 18, 19, and 20 of U.S. Pat. No. 11,086,934 ("the '934 Patent").

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.

Dated: April 4, 2024

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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:

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