

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUBOTV MEDIA LLC and YANKA INDUSTRIES, INC.,
Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,
Patent Owner.

IPR2024-00917
Patent 10,757,156 B2

Before THU A. DANG, MICHELLE N. WORMMEESTER, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

ERRATA

Errors have been identified in the Final Written Decision in this proceeding.

Specifically, “FUBOTV MEDIA INC.” in the captions for the Majority opinion and the Concurring opinion of the Final Written Decision should be “FUBOTV MEDIA LLC” in both the Parties and Board version (Paper 73) and the Public version (Paper 76).

On page 2 of the Final Written Decision, “fuboTV Media Inc.” appears once and should be “fuboTV Media LLC.”

In addition, the Concurring opinion was entered without certain formatting and without a footnote. A corrected version of the Concurring opinion is reproduced below in its entirety:

HUDALLA, *Administrative Patent Judge*, concurring.

I concur with the outcome of this Final Written Decision, but I come to that conclusion in a different manner than my colleagues.

Regarding secondary considerations of nonobviousness, I find that the developed record of this case does not support that multiple TCP connections or multiple, parallel/simultaneous TCP connections are critical, unclaimed features of the ’156 patent. Indeed, Petitioner does not argue as much, and claim 2 recites multiple TCP connections. Notwithstanding, I would reach the same conclusion as my colleagues that Patent Owner is not entitled to a presumption of nexus. I am persuaded by Petitioner’s argument (Pet. Reply 22–23) that Patent Owner cannot credibly maintain that it is entitled to a presumption of nexus to the same products—the MOVE Media Player and “Sling TV”—across nine patents and 120 claims having different scope while citing to substantially the same alleged evidence of secondary considerations. The MOVE Media Player and “Sling TV” cannot be coextensive with the challenged claims here under these circumstances. In addition, Patent Owner’s own cited evidence suggests that MOVE’s plug-in is a “key” feature of its technology, particularly to ensure “fluidity of playback” (PO Resp. 53 (quoting Ex. 2048) (emphasis omitted)), but the claims do not recite a plug-in. This also undermines Patent Owner’s

assertions of coextensiveness for claims that all recite “continuous playback.”

Otherwise, I agree with my colleagues’ finding that Patent Owner has not adduced significant evidence of direct nexus. Accordingly, I join in my colleagues’ finding that Patent Owner has failed to establish a nexus between the asserted evidence of secondary considerations and the challenged claims. I also agree that Patent Owner’s evidence of secondary considerations is entitled to insignificant weight, or little to no weight, and that it does not outweigh Petitioner’s persuasive obviousness showing under the other *Graham* factors. Thus, I join in my colleagues’ determination that Petitioner has shown, by a preponderance of the evidence, that claims 1 and 3–18 would have been obvious over Leaning.

Regarding claim 2, I agree with Patent Owner (PO Resp. 31–35) that Leaning does not teach or suggest the use of *multiple* TCP connections. I am not persuaded by Petitioner’s argument that the mention of HTTP 1.0 in Leaning renders obvious a particular arrangement of multiple TCP connections as suggested by Petitioner.¹ *See, e.g.*, Pet. 40. Patent Owner shows that other possible connection arrangements, such as a single persistent connection, were contemplated by HTTP 1.0. *See* Ex. 2141 ¶ 112. In my opinion, this undermines Petitioner’s assertion that an ordinarily skilled artisan would have implemented multiple TCP connections in Leaning’s system. *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073

¹ Nevertheless, I agree with my colleagues that the references to HTTP standards in Leaning suggest using “at least one transmission control protocol (TCP) connection” (i.e., limitation 1[A][2]) given that HTTP operates over TCP connections. *See* Ex. 1003 ¶¶ 58–59.

(Fed. Cir. 2015) (“[O]bviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention.”). Thus, I would determine that Petitioner has not shown by a preponderance of the evidence that claim 2 would have been obvious over Leaning.

Notwithstanding, I agree with and join in my colleagues’ analysis of claim 2 based on the Leaning–Ala-Honkola ground and their determination that Petitioner has shown by a preponderance of the evidence that claim 2 would have been obvious over the combination of Leaning and Ala-Honkola.

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