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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MANOLO FABIO RIVERA<sup>1</sup>

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Appeal 2019-005045  
Application 14/599,345  
Technology Center 2400

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Before BRADLEY W. BAUMEISTER, JOHN A. EVANS, and BRIAN D. RANGE, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE<sup>2</sup>

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of Claims 1–25 and 27–38. Appeal Br. 1. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). The Appeal Brief identifies AMAZING SETTOPBOX HOLDING LLC, as the real party in interest. Appeal Br. 1.

<sup>2</sup> Throughout this Decision, we refer to the Appeal Brief (“Appeal Br.”) filed January 9, 2019, the Reply Brief (“Reply Br.”) filed June 14, 2019, the Final Office Action (“Final Act.”) mailed October 24, 2018, the Examiner's Answer mailed April 15, 2019, and the Specification (“Spec.”) filed January 16, 2015.

## INVENTION

The invention is directed to a wireless IPTV set top box. *See* Abstract. Claims 1, 12, 27, 31, and 35 are independent. Appeal Br. 1. Claim 1, reproduced below, is illustrative of the invention.

1. A wireless set top box comprising:

a plurality of wireless modem modules configured for processing internet protocol television (IPTV) signals, wherein each wireless modem module is configured to:

receive a plurality of IPTV wireless broadband connection signals from a plurality of cellular data networks; and

process the received plurality of IPTV wireless broadband connection signals into a set of data signals according to a different respective wireless communication standard; and

a processor communicatively coupled to the wireless modem modules, wherein the processor is configured to:

establish, using at least two of the wireless modem modules, a plurality of wireless network links between the wireless set top box and at least one cellular data network;

receive, using each of the at least two wireless modem modules, a respective set of data transmitted through one of the network links;

determine a wireless broadband connection signal strength associated with each set of data;

identify, from among the sets of data, a set of data corresponding to a strongest wireless broadband connection signal strength;

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determine internet protocol television (IPTV) signals upon among the set of data from the strongest wireless broad band connection signal strength; and

transmit output signals corresponding to the IPTV signals to a device communicatively coupled to the[] wireless set top box.

Appeal Br. 20 (Claims App.).

#### PRIOR ART

Name <sup>3</sup>	Reference	Date
Sampsell	US 6,219,839 B1	Apr. 17, 2001
Margulis	US 6,263,503 B1	July 17, 2001
Safadi	US 2001/0051037 A1	Dec. 13, 2001
Wolff	US 2004/0031056 A1	Feb. 12, 2004
Valmiki	US 2005/0012759 A1	Jan. 20, 2005
Amine	US 2005/0091693 A1	Apr. 28, 2005
Roche	US 2007/0136459 A1	June 14, 2007
Wilhelm	US 2007/0256096 A1	Nov. 01, 2007
Tsui	US 2009/0167945 A1	July 02, 2009
Skeels	US 2009/0067488 A1	Mar. 12, 2009
Raleigh	US 2010/0188975 A1	July 29, 2010
Nicoara	US 2012/0140651 A1	June 7, 2012 <sup>4</sup>

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<sup>3</sup> All citations herein to the references are by reference to the first named inventor/author only.

<sup>4</sup> Priority provisional application No. 61/418,460, filed December 1, 2010.

### REJECTIONS<sup>5</sup> AT ISSUE

1. Claims 1–25 and 27–38 stand provisionally rejected on the ground of nonstatutory double patenting over Claims 1–25 and 27–38 of co-pending Application No. 14/599317 (Abn), and over Claims 1–26 of co-pending Application No. 14/599371(Abn). Final Act. 5.
2. Claims 1, 3–7, 10–12, 14–18, 21, and 22 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, and Nicoara. Final Act. 6–13.
3. Claims 33–37 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, and Tsui. Final Act. 13–14.
4. Claims 2 and 13 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, and Margulis. Final Act. 14–15.
5. Claims 8, 9, 19, 20, and 25 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, and Wilhem. Final Act. 15–16.
6. Claims 23 and 14 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, and Sampsell. Final Act. 16–17.
7. Claims 27–29 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, Tsui, and Valmiki. Final Act. 17–19.

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<sup>5</sup> The present application is being examined under the pre-AIA first to invent provisions. Final Act 2.

8. Claim 30 stands rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, Tsui, Valmiki, Safadi, Wolff, and Amine. Final Act. 19–20.
9. Claims 31, 32, and 33<sup>6</sup> stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, Tsui, Valmiki, and Skeels. Final Act. 20–21.
10. Claim 34 stands rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, Tsui, Valmiki, Skeels, Safadi, Wolff, and Amine. Final Act. 21–22.
11. Claim 38 stands rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Roche, Raleigh, Nicoara, Tsui, Safadi, Wolff, and Amine. Final Act. 22–23.

#### ANALYSIS

We have reviewed the rejections of Claims 1–25 and 27–38 in light of Appellant’s arguments that the Examiner erred. Appellant’s arguments are persuasive of error. We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellant’s arguments as they are presented in the Appeal Brief and the Reply Brief.

#### CLAIMS 1–25 AND 27–38: PROVISIONAL NONSTATUTORY

##### DOUBLE PATENTING.

Claims 1–25 and 27–38 stand provisionally rejected on the ground of nonstatutory double patenting over Claims 1–25 and 27–38 of co-pending

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<sup>6</sup> Claims 32 and 33 are discussed in the body of the rejection. We assume their omission from the header is harmless typographical error.

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Application No. 14/599317, and over Claims 1–26 of co-pending  
Application No. 14/599371. Final Act 5.

Our inspection of the files of the two related applications reveals that each has gone abandoned. Thus, we do not reach the merits as the rejection appears to be moot.

CLAIMS 1, 3–7, 10–12, 14–18, 21, AND 22:

OBVIOUSNESS OVER ROCHE, RALEIGH, AND NICOARA.

Appellants argue independent Claim 1 and its dependent Claims 2–11, independent Claim 12 and its dependent Claims 13–25, independent Claim 27 and its dependent Claims 28–30, independent Claim 31 and its dependent Claims 32–34, and independent Claim 35 and its dependent Claims 36–38, as a group in view of the recitations of independent Claim 1. *See* Appeal Br. 11. Independent Claim 1 recites, *inter alia*, “[a] wireless set top box comprising: a plurality of wireless modem modules configured for processing IPTV signals.” Independent Claims 12, 27, 31, and 35 recite commensurate limitations.

Appellant contends “Roche does not disclose a wireless set-top box that comprises ‘a plurality of wireless modem modules configured for processing IPTV signals.’” Appeal Br. 11.

The Examiner finds, “Roche discloses a wireless set top box” because the television set 120 with integrated set box functions reads on a set top box. Final Act. 6 (citing Roche, ¶ 14). The Examiner finds Roche does not disclose a plurality of wireless modems configured to process IPTV signals. Final Act. 7. However, the Examiner finds, “Raleigh discloses a plurality of wireless modem modules configured for processing signals.” *Id.* at 8. The

Examiner further finds modifying the system of Roche with the methods of Raleigh would result in wireless modems configured to process IPTV signals. *Id.*

Appellant argues that, contrary to the Examiner's finding, Roche does not disclose a wireless set top box. Appeal Br. 12. Appellant quotes Roche as disclosing: "the end user can have a digital and or analog television set 120 residing in a residence with integrated functions such as found in a set top box. **Alternatively**, the end user can utilize a portable media device such as a cell phone 122 (or multimode device) capable of voice and high speed data communication." *Id.* (quoting Roche, ¶ 14) (cited by the Examiner). Appellant argues Roche's use of the word "alternatively," means set top box 120 is not the same device as cellphone 122. *Id.* Moreover, Appellant argues Roche does not suggest that set top box 120 is capable of wireless communications. *Id.*

The Examiner responds, clarifying that Roche discloses: "[t]he aforementioned media devices 120–126 can be connected to the MSS [multimedia services system] 100 by way of a wired and/or wireless communication link 103 to a communication system 101." Ans. 6 (quoting Roche, ¶ 15).

Appellant subsequently argues: "[t]he essential evidential rational of Appellant is that the generic teaching of a landline IPTV in Roche did not provide the teaching for a wireless IPTV set-top box that receives cellular wireless signals." Reply Br. 2.

Turning to the cited art, Roche discloses:

FIG. 1 is a block diagram of multimedia services system (MSS) 100 according to teachings of the present disclosure. The MSS 100 comprises one or more service centers such as a



streaming audio and video service center 102, an Internet Protocol Television (IPTV) service center 104, a gaming service center 106, a central office service center 108, and a wireless communications service center 110, just to mention a few. Each of the service centers is coupled by landline (or wireless) communication means to a controller 112 that manages said systems.

Roche, ¶ 10. We find Roche discloses a plurality of service centers. We find Roche discloses each center communicates alternatively by landline or wireless means. We find no disclosure that each center communicates by both means. For example, Roche discloses a distinction between landline and wireless services:

The central office service center 108 provides common landline services such as POTS (Plain Old Telephone Services), cable services, and/or broadband services such as xDSL (Digital Subscriber Line). The wireless communications service center 110 provides common wireless services such as cellular communications, dispatch services, WiFi, or WiMax.

Roche, ¶ 13.

Roche discloses: “the end user can have a digital and/or analog television set 120 residing in a residence with integrated functions such as those found in a set top box.” Roche, ¶ 14 (cited by the Examiner). There is no suggestion the set top box comprises wireless modem(s). Roche provides an alternative, wireless embodiment: “Alternatively, the end user can utilize a portable media device such as a cell phone 122 (or multimode device) capable of voice and high-speed data communications.” *Id.*

The Examiner finds “Nicoara is not relied upon to disclose IPTV signals nor processing IPTV signals.” Final Act. 2. The Examiner finds

Raleigh discloses mobile devices comprising wireless modems. Final Act. 8.

We agree with Appellant's contention that Raleigh discloses a plurality of wireless modems for WWAN, USB, WIFI, BLUETOOTH, and ETHERNET communications, but Raleigh fails to disclose modems for IPTV signals. Appeal Br. 14.

We find the cited art fails to teach or suggest a plurality of wireless IPTV modems, as claimed in each of the independent claims. In view of the foregoing, we decline to sustain the rejection of Claims 1–25 and 27–38.

In view of the foregoing, we decline to sustain the rejection of independent Claims 1, 12, 27, 31 and 35 and of claims dependent therefrom.

## CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–25 and 27–38		nonstatutory double patenting		Moot
1, 3–7, 10–12, 14–18, 21, 22	103	Roche, Raleigh, Nicoara		1, 3–7, 10–12, 14–18, 21, 22
33–37	103	Roche, Raleigh, Nicoara, Tsui		33–37
2, 13	103	Roche, Raleigh, Nicoara, Margulis		2, 13
8, 9, 19, 20, 25	103	Roche, Raleigh, Nicoara, Wilhem		8, 9, 19, 20, 25
23, 14	103	Roche, Raleigh, Nicoara, Sampsell		23, 14
27–29	103	Roche, Raleigh, Nicoara, Tsui, Valmiki		27–29

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30	103	Roche, Raleigh, Nicoara, Tsui, Valmiki, Safadi, Wolff, Amine		30
31, 32, 33	103	Roche, Raleigh, Nicoara, Tsui, Valmiki, Skeels		31, 32, 33
34	103	Roche, Raleigh, Nicoara, Tsui, Valmiki, Skeels, Safadi, Wolff, Amine		34
38	103	Roche, Raleigh, Nicoara, Tsui, Safadi, Wolff, Amine		38
<b>Overall</b>				1-25, 27- 38

REVERSED