

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK CORP. AND DISH NETWORK L.L.C.,
Petitioner,

v.

CUSTOMEDIA TECHNOLOGIES, INC.,
Patent Owner.

Cases CBM2017-00019 (Patent 7,840,437)¹
CBM2017-00032 (Patent 9,053,494)

Before MEREDITH C. PETRAVICK and MICHAEL W. KIM,
Administrative Patent Judges.

KIM, *Administrative Patent Judge.*

DECISION
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ This Order addresses the same issue in the above-identified reviews. Therefore, we issue one Order to be filed in all cases. The parties are not authorized to use this style of heading.

CBM2017-00019 (Patent 7,840,437)

CBM2017-00032 (Patent 9,053,494)

On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on less than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at *10 (U.S. Apr. 24, 2018). Although *SAS* addressed the statutory section for final written decisions in *inter partes* reviews, the corresponding section for post-grant reviews, 35 U.S.C. § 328(a), uses essentially identical language, so we interpret it the same way. *See Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007) (stating that “identical words and phrases within the same statute should normally be given the same meaning”).

Accordingly, we determine that the Court’s reasoning and the Office’s resulting guidance applies equally to post-grant reviews. In our Decisions on Institution, we determined that Petitioner demonstrated that it was more likely than not that it would establish that at least one of the challenged claims in each of the following patents are unpatentable: U.S. Patent No. 7,840,437 (CBM2017-00019, Paper 11); U.S. Patent No. 9,053,494 (CBM2017-00032). We modify our Decisions on Institution to institute on all of the challenged claims and all of the grounds presented in their respective Petitions.

The parties shall confer to discuss the impact, if any, of this Order on the current schedule. If, after conferring, the parties wish to otherwise change the schedule or submit further briefing, the parties must, within one week of the date of this Order, request a conference call with the panel to seek authorization for such changes or briefing.

CBM2017-00019 (Patent 7,840,437)

CBM2017-00032 (Patent 9,053,494)

In consideration of the foregoing, it is hereby:

ORDERED that our Decisions on Institution are modified to include review of all challenged claims and all grounds presented in their respective Petitions; and

FURTHER ORDERED that Petitioner and Patent Owner shall confer to determine whether they desire any changes to the schedule or any further briefing, and, if so, shall request a conference call with the panel to seek authorization for such changes or briefing within one week of the date of this Order.

CBM2017-00019 (Patent 7,840,437)

CBM2017-00032 (Patent 9,053,494)

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