

CableFAX Daily™

Wednesday — June 9, 2010

What the Industry Reads First

Volume 21 / No. 110

Still Going: Even 'Final' Isn't Final in Never-ending Dish-TiVo Patent Case

The latest development in the **TiVo-DISH** patent case could hold some promise for not just DISH, but for **AT&T** and **Verizon** as well. A **Patent & Trademark Office** examiner issued a "final" rejection of some of TiVo's software claims—the same claims TiVo is asserting against AT&T and Verizon in its patent suit on time warping. They are also the same claims DISH/EchoStar was found to have infringed in the contempt ruling now pending for en banc review by the Federal Circuit. But no one should get too comfy with the PTO decision. "Virtually nothing is ever final at the PTO," **Stifel Nicolaus** told clients in a research note. "In our experience, the PTO process works more slowly than (and thus rarely affects) the court process." TiVo has several more opportunities to challenge the rejection and can tweak the rejected claims to "bring them back to life before the examiner" or appeal to the Board of Patent Appeals at the PTO and then appeal to the Federal Circuit, it said. Nonetheless, DISH said it's pleased with the latest development. "In the Final Office Action, three examiners of the PTO considered TiVo's response and, in a detailed 32-page decision, finally concluded that the software claims were unpatentable in view of two prior art references," DISH said. Meanwhile, oral arguments are set for Nov 9 in the en banc review of DISH's appeal of TiVo's patent contempt case against its DVR work-around—or what we prefer to call "the patent case that will never end." While disappointed with the PTO action, TiVo reiterated that it's just 1 of several steps in the review process. "It is important to note that TiVo received a 'final action' holding several claims invalid during EchoStar's 1st re-examination request at this juncture only to have the PTO ultimately uphold the validity of all claims of the patent," TiVo said.

Mobile: The mobility of news surrounding the mobile media space remains robust this week. In NY, the **Mobile Marketing Assoc** kicked off its 2-day **Mobile Marketing Forum**, where cable nets including **CNBC**, **CNN**, and **ESPN** are slated to provide discourses on the marketing efforts and opportunities available for the platform. **Google** dir, emerging platforms **Mike Steib** underscored the need for more efficient ad platforms as 1 of the most important mobile trends today while **Morgan Stanley** analyst **Mary Meeker** highlighted a number of interesting points at the **Conversational Marketing Summit**, also in NY. As mobile Internet adoption is ramping at a faster clip than did desktop Internet, annual shipments of smartphones will exceed those of traditional handsets by '11, said Meeker, and those

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WHAT THE INDUSTRY READS FIRST

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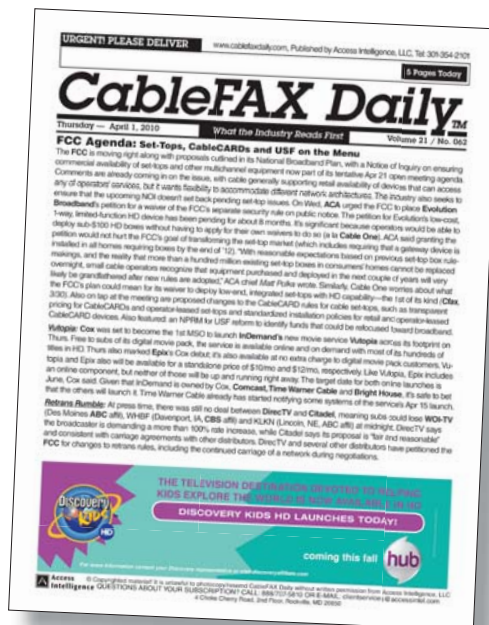
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of PCs by '12. A \$50bln global opportunity exists in equalizing the gap between time spent surfing the Web and the associated ad spend, said Meeker. In other words, 28% of media consumption time is Web-related, yet the Internet only receives 13% of the overall media spend—and half as much as print receives. TV's respective percentages are 31% and 39%. Released at the Summit, a new report from **mobileSquared** foresees huge growth ahead in the US conversational ad market, from \$48mln this year to \$2bln in '15. Marketing that surrounds/uses mobile text will dominate the market going forward, said **SinglePoint** CEO *Gowri Shankar*. Irrespective of individual views on this ad type, **comScore** data shows that in an avg month (Jan-Apr), 64.6% of US mobile subs used text messaging, up 1.1% vs the prior 3 month period, while 31.1% used browsers (+2.5%) and 29.8% downloaded apps (+ 3.1%). -- In other mobile news, **ESPN** has started ramping up its app-based ad sales (*Cfax*, 5/25), and on Tues intro'd with **StubHub** an app letting fans buy event tickets through mobile handsets. **Turner Sports' SportsNOW** mobile app, the unit's 1st branded consumer product, bowed World Cup features such as match scores and highlights, plus the integration of social media. Also of note on the mobile front: **Mobile Content Venture**, a jv comprised of 12 broadcasting groups aimed at launching a national mobile DTV content service using broadcast spectrum, named **Fox Networks Group** svp, corp dev *Erik Moreno* and **NBCU Digital Distribution** svp, mobile platform dev *Salil Dalvi* as interim co-gms. MCV's membership also includes **Cox Media**, **ION TV** and **Hearst TV**.

Glitch: Some **DirecTV** customers woke up Tues to find their HD DVRs weren't working, a crisis we were 1st alerted of by a flood of **Twitter** complaints. (A tip of the hat to DirecTV for responding to users on the social networking site and acknowledging a "transmission glitch"). "DIRECTV has fixed the problem and we apologize to our customers for any inconvenience this has caused them," said a spokesperson. It was not clear how many customers were impacted.

In the States: **Insight** said Northern KY will be its 2nd market to transition to all-digital. It announced last month that Lexington would be the first, with customers getting 100+ HD channels, multi-room DVR and a 50Mbps Internet service once complete. -- **Comcast's** lobbying team and its entire federal govt affairs office will move a little bit closer to Capitol Hill at the end of summer, signing a lease for new (and larger) digs at 300 New Jersey Ave NW. The office is currently located at 2001 Pennsylvania Ave. We're guessing the extra square footage will be helpful, assuming the **NBCU** deal is approved.

At the Portals: **ACA** is asking the **FCC** to ensure that all parties have sufficient time to review Commission-requested info from **Comcast** and **NBCU** and provide comments. The information requests are due to the FCC on Fri. ACA said it's not seeking to delay the comment cycle or Commission review, but it expects the data to be very useful in its analysis of "the harms resulting from the proposed combination." Last month, the FCC sent nearly 20 pages of questions to each company, asking for detailed account on Comcast's subs and pricing and lots of queries to both on online video.

On the Hill: The **House Communications subcmte** will hold a hearing Thurs on the 21st Century Communications and Video Accessibility Act of '09, which would update communications laws to ensure that persons with vision, hearing and other disabilities are able to fully use broadband services and better access video programming devices. Witnesses include **NCTA** evp *James Assey* and the **Hearing Loss Assoc of America's Lise Hamlin**.

Carriage: Ahead of the World Cup's Fri kickoff, **Comcast** added the HD versions of **Univision** and **TeleFutura** in the Boston and DC areas. In CO locales including Denver and Colorado Springs, the MSO launched more than 70 HD nets as part of its **Xfinity TV** rollout, including **Discovery Channel HD**, **Comedy Central HD** and **MSNBC HD**.

3DTV: Former **Discovery Channel** evp/COO *Tom Cosgrove* will lead Discovery's foray into 3D programming. As pres/gm of the co's 3D net jv with **Sony** and **IMAX**, Cosgrove will oversee all aspects of the 24/7 channel, which is still without a name and slated to launch next year. Discovery Comm svp, digital distribution *Rebecca Glashow* will handle the net's distribution, and **Sony Pictures TV** pres, advertiser sales *Amy Carney* will lead its ad/promo sales efforts.

Ratings: Across **MTV**, **MTV2** and **VH1**, the '10 "MTV Movie Awards" garnered 16.4mln total viewers, up 2% YOY and marking the event's largest audience since '03. MTV's 123min telecast earned a 3.3/3.31mln to rank 7th among cable's top telecasts last week. -- Who needs *Jon*? *Kate Gosselin* returned to **TLC** Sun night with solid numbers. The initial ep of "Kate Plus 8" earned a 2.6/2.55mln, the ensuing ep a 2.5/2.44mln. Both posted double-digit delivery gains versus the Nov '09 "John & Kate Plus 8" premieres. -- The Thurs returns of **USA's** "Burn Notice" and "Royal Pains" ranked 2nd and 3rd among all cable telecasts last week, with a 4.7/4.65mln and 4.1/4.12mln, respectively.

BUSINESS & FINANCE

-- The premiere of **Nat Geo's** "Expedition Great White" got bites from 2.3mln total viewers (and a 1.03 HH rating); it's the net's 2nd highest-rated series premiere ever.

Honors: 5 companies' campaigns are vying for induction into the **CTAM** Hall of Fame: **BET:** Rap-It-Up Campaign; **Cablevision:** Optimum Voice; **Showtime:** "Weeds" – Five Years of Buzz; **Time Warner Cable:** Marketing of Road Runner and **WWE:** PPV Events Marketing. CTAM leaders select the inductee, which will be announced in a special ceremony during **CTAM Summit**, Oct 18-20, New Orleans.

On the Circuit: **C-SPAN's** new Digital Bus launched Tues. Nice tour of the 45-foot bus led by *Brian Lamb* on **MSNBC** (watch at: www.msnbc.msn.com/id/37571203/dis).

Editor's Note: We still have a few seats available for our upcoming social media workshop in our NYC offices on Wed, Jun 16. The workshop—"Social Media: Leveraging the New Platforms Beyond Facebook and Twitter"—aims to tell you all you need to know about emerging social media platforms. These are the sites and services that few are talking about yet. So get a jump on your competitors by learning about them first and integrating them into your marketing and customer relationship strategies. For more details, go to <http://www.cablefax.com/cfp/training-20100616.html>.

CableFAX Daily Stockwatch

Company	06/08 Close	1-Day Ch	Company	06/08 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	37.61	(0.1)	ARRIS GROUP:	10.33	0.06
DISH:	19.97	0.05	AVID TECH:	12.35	(0.48)
DISNEY:	33.15	0.11	BIGBAND:	2.94	0.01
GE:	15.48	0.07	BLNDER TONGUE:	1.30	0.01
NEWS CORP:	14.69	0.23	BROADCOM:	32.20	(0.38)
MSOS					
CABLEVISION:	23.47	(0.15)	CISCO:	22.95	0.20
COMCAST:	17.43	0.07	CLEARWIRE:	7.67	(0.04)
COMCAST SPCL:	16.49	0.03	COMMSCOPE:	24.97	(0.02)
GCI:	5.99	0.02	CONCURRENT:	5.01	(0.09)
KNOLOGY:	10.95	(0.25)	CONVERGYS:	9.94	(0.09)
LIBERTY CAPITAL:	39.36	(0.12)	CSG SYSTEMS:	18.80	(0.29)
LIBERTY GLOBAL:	24.38	0.01	ECHOSTAR:	20.50	0.23
LIBERTY INT:	12.26	(0.14)	GOOGLE:	484.78	(0.74)
MEDIACOM:	6.24	(0.04)	HARMONIC:	5.45	(0.01)
RCN:	14.59	0.09	INTEL:	20.18	(0.13)
SHAW COMM:	18.74	0.35	JDSU:	10.23	0.02
TIME WARNER CABLE:	52.19	(0.23)	LEVEL 3:	1.16	(0.04)
VIRGIN MEDIA:	15.73	0.20	MICROSOFT:	25.11	(0.18)
WASH POST:	438.54	(4.16)	MOTOROLA:	6.66	0.09
PROGRAMMING					
CBS:	13.31	(0.05)	PHILIPS:	28.50	0.41
CROWN:	1.78	0.02	RENTRAK:	21.08	(0.85)
DISCOVERY:	35.87	(0.19)	SEACHANGE:	7.52	0.07
GRUPO TELEVISA:	17.58	0.06	SONY:	28.62	0.33
HSN:	23.58	0.51	SPRINT NEXTEL:	4.59	(0.07)
INTERACTIVE CORP:	22.47	(0.06)	THOMAS & BETTS:	36.94	0.00
LIBERTY:	31.30	(0.04)	TIVO:	7.70	(0.45)
LIBERTY STARZ:	50.69	(0.91)	TOLLGRADE:	6.50	0.04
LIONSGATE:	7.00	0.06	UNIVERSAL ELEC:	18.08	(0.14)
LODGENET:	4.25	(0.16)	VONAGE:	1.90	(0.02)
NEW FRONTIER:	1.78	(0.02)	YAHOO:	14.79	(0.15)
OUTDOOR:	5.14	(0.01)	TELCOS		
PLAYBOY:	3.16	(0.23)	AT&T:	24.97	0.65
SCRIPPS INT:	42.84	(0.3)	QWEST:	5.25	0.10
TIME WARNER:	30.20	(0.2)	VERIZON:	27.68	0.60
VALUEVISION:	1.70	0.03	MARKET INDICES		
VIACOM:	35.93	(0.02)	DOW:	9939.98	123.49
WWE:	16.04	(0.05)	NASDAQ:	2170.57	(3.33)
TECHNOLOGY					
ADC:	7.28	0.01			
ADDVANTAGE:	2.75	(0.02)			
ALCATEL LUCENT:	2.45	0.03			
AMDOCS:	26.81	(0.22)			
AMPHENOL:	39.16	(0.64)			
AOL:	20.34	(0.27)			
APPLE:	249.33	(1.61)			

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