

Cablefax Daily™

Wednesday — November 1, 2017

What the Industry Reads First

Volume 28 / No. 210

Heavy Metal: USPTO To Review Music Choice Patents at Stingray's Behest

The **US Patent and Trademark Office** (USPTO) has decided to review five of **Music Choice's** patents at the request of rival **Stingray Music**, another twist in the ongoing feud between the two pay-TV music services. Montreal-based Stingray petitioned the USPTO's Patent Trial and Appeal Board (PTAB) earlier this year, asking the body to consider invalidating the patents on the grounds that the company's underlying technology isn't novel or non-obvious. The patents in question cover the technology and processes that Music Choice uses to display relevant on-screen information and visuals to compliment a given song, as well as some VOD functionality. The PTAB's decision to conduct an inter partes review (IPR) of the five patents indicates it believes there is a "reasonable likelihood that at least one of the claims challenged in the petition is unpatentable." "The Patent Office's institution of the proceedings is the start of a review, and is just another part of the ongoing litigation process," Music Choice said in a statement. "We have no comment on pending litigation." Between September 2012 and March 2017, 65% of all IPR trials resulted in all claims being deemed unpatentable, with another 16% resulting in some claims being deemed unpatentable. The dispute over the patents stems back to a 2016 lawsuit, in which Music Choice alleged that Stingray was infringing on several of its patents. In that suit, Music Choice claimed Stingray obtained confidential information about Music Choice during an acquisition inquiry that it then used to copy features and functionality deployed by Music Choice. Stingray has since filed a counterclaim against Music Choice for unfair commercial practices, including smearing its reputation. That litigation is still pending in the Eastern District of Texas. Music Choice is the incumbent in the US music-for-cable business and currently reaches 49mIn US households with its linear music channels on on-demand music videos. It is owned by a consortium that includes **Comcast, Cox** and **Charter** among its stakeholders, along with tech and media giants **Microsoft, Arris, Sony, Time Warner** and **EMI Music Publishing**. Stingray has a track record internationally, but is a relatively nascent entrant into the US market. In addition to traditional linear music channels, its offerings include on-demand music videos, concerts, karaoke and ambiance (think Christmas yule log). Stingray svp, general counsel and corporate secretary *Lloyd Feldman* said the company's 2014 deal with **AT&T**, a former Music Choice partner, put Stingray in Music Choice's crosshairs. In May 2016, Stingray

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CABLEFAX DAILY (ISSN 1069-6644) is published daily by Access Intelligence, LLC ● www.cablefax.com ● 301.354.2101 ● Editorial Director: Amy Maclean, 301.354.1760, amaclean@accessintel.com ● Publisher: Michael Grebb, 323.380.6263, mgrebb@accessintel.com ● Associate Editor: Sara Winegardner, 301.354.1701, swinegardner@accessintel.com ● Community Editor: Alex Silverman, 212.621.4951, asilverman@accessintel.com ● Dir. of Bus Dev.: Rich Hauptner, 203.899.8460, rhauptner@accessintel.com ● Acct. Exec: Olivia Murray, 301.354.2010, omurray@accessintel.com ● VP Marketing: Amy Jefferies, 301.354.1699, ajefferies@accessintel.com ● Marketing Manager: Charlotte Clay, 301.354.1710, cclay@accessintel.com ● Production Manager: Joann Fato, jfato@accessintel.com ● Diane Schwartz, SVP Media Comms Group, dschwartz@accessintel.com ● Group Subs or Subscription Questions, Client Services: 301.354.2101, client-services@accessintel.com ● Annual subscription price: \$1,699.97/year ● Access Intelligence, LLC, 9211 Corporate Blvd., 4th Floor, Rockville, MD 20850

signed a wide-ranging agreement with Comcast, a Music Choice stakeholder. Music Choice filed its infringement suit just over a month later. “What really set off Music Choice was the idea that one of their premier unitholders, while still doing business with Music Choice, was very happy to—and perhaps felt the need to in order to provide a great offering to their viewers—do a deal with Stingray,” Feldman said. Stingray’s attorneys are scheduled to appear back in court regarding the infringement suit in February, and it is unclear whether the PTAB will have ruled on the validity of Music Choice’s patents by then. Stingray will likely seek a postponement of the litigation pending the results of the review.

No Moody Blues Here: Moody’s Investor Services issued a positive outlook report Tuesday for the cable industry’s next 12-18 months. The research service projected EBITDA growth near 6% over that period, with **Comcast** and **Charter** driving the sector’s performance. The report noted cost savings from consolidation, most notably Charter and **Altice USA**, “will be meaningful,” estimating collective savings from those two companies alone will contribute 1.5-2.5% annually to EBITDA growth. Moody’s also cited broadband demand as a driver of growth, citing high margins and the fact that broadband subs are increasing 8x faster than video subs are decreasing. The report also projected that the triple-play-equivalent ratio (penetration rate of broadband, video and voice) will be approaching 35% at the end of next year.

Steel Your Face: Comcast launched 1Gbps Internet service powered by DOCSIS 3.1 technology to residential customers in the Pittsburgh area. Several areas in the region were not part of Monday’s launch but will receive Gigabit service by the middle of November. The offering costs \$104.95/month, but Comcast is offering it at a promotional price of \$79.99/month for those who sign a one-year contract. Comcast has been swift in its implementation of DOCSIS 3.1, most recently rolling it out in Philadelphia and Baltimore.

Netflix in Ultra HD: Comcast is making **Netflix’s** Ultra HD offering available on its X1 platform, allowing users to watch content in 4K. The service features more than 1,200 hours of 4K content. Customer will need the 4K-compatible XG1v4 set-top box to access 4K video.

Smart Home: Altice will now offer **Nest** connected home products and services to its customers. **Optimum** and **Suddenlink** customers can incorporate Nest technology into their home energy and safety systems. They’ll also have the option to subscribe to Nest Aware, a service providing intelligent alerts and 24/7 continuous video recording for Nest Cam users. Subscriptions to Nest services will be included as part of customers’ Altice bills.

Cablefax Awards Gala

November 7 | Taglyan Complex, LA | 5:30 p.m. - 8:30 p.m.

Join Cablefax in LA to celebrate all the honorees for the Program Awards, Trailer Awards and the brand-new Affiliate Marketing Hot List

Register: <http://bit.ly/2xsDJU9>

Questions? Contact Charlotte Clay at cclay@accessintel.com.

Contact Olivia Murray to sponsor at omurray@accessintel.com.

Fox on Fubo: FuboTV added local Fox stations in a dozen more markets, expanding coverage to 66% of U.S. households. The latest adds are Albuquerque (**KRQE**), Louisville (**WDRB**), Jacksonville (**WFOX**), Norfolk (**WVBT**), New Orleans (**WVUE**), Little Rock (**KLRT**), Waco (**KWKT**), Colorado Springs (**KXRM**), Baton Rouge (**WGMB**), Huntsville (**WZDX**), Providence (**WNAC**) and Roanoke (**WFXR**). Subscribers in 80 markets now have access to their local Fox stations, and those that don't can access Fox programming via its TV Everywhere apps.

Tokyo Drift: TiVo has announced that Japan-based **Jupiter Communications** (J:COM) signed a multi-year license renewal for TiVo's G-Guide and IP in the country. The agreement has been expanded to cover OTT subscribers on mobile devices and PCs as well as extending J:COM's license to cover its OTT subsidiaries.

Amazon Expands: **Discovery Communications** struck a deal to bring Discovery Channel to **Amazon** in Germany and Austria. The launch is an extension of the streaming cooperation between the two companies, which launched **Eurosport Player** earlier this year. The channel is available via the **Prime Video** app on Smart TVs, mobile iOS and Android devices and Fire tablets, as well as on **Amazon Fire TV** and Fire TV Stick.

Fluency Plus: **NBCUniversal Telemundo** is expanding **Fluency Studios** with the launch of "Fluency Plus," a bilingual digital production studio. The studio is set to serve more than 13mln Hispanic millennials and members of Gen Z. Content will include web and social-first series, mini-series and 360-degree virtual reality experiences. Fluency will relocate to Telemundo's Miami headquarters in 2018.

OTT in Africa: **Envivo Communications** is launching an OTT streaming service called **nVIVO TV** in Africa, where streaming video on mobile devices and smartphones is more common than watching content on TV or in theaters. Powered by **Cisco's** Infinite Video Solution, the service will make Nigerian-grown content and international products available for streaming on mobile devices beginning next year.

Come One, Come All: **NCTA** is partnering with **Comcast**, **Cox**, **CTAM**, **SCTE** and more to hold the 7th Interactive Launch Competition, an MBA student case study competition and recruitment initiative. Student teams will work together to develop and present broadband and television strategies to a panel of top industry execs, including former **FCC** commish *Kathleen Abernathy* and **SCTE-ISBE's** *Mark Dzuban*. **ITV's** *Craig Leddy*, **NCTA's** *Rob Stoddard*, **CTAM's** *Anne Cowan* and **Arris'** *Alex Swan* will host the competition at the NCTA Theater in DC on Nov 8. It will be also available as a nationwide webcast.

Weekly Ratings Recap: With the **MLB** moving over to the **Fox** broadcast net for the World Series, **ESPN** returned to the top of the primetime viewership rankings among cable nets with an average of 2.4mln P2+. Eagles-Redskins on "Monday Night Football" led all cable programs with an average of 11.4mln viewers, followed by Sunday's episode of **AMC's** "The Walking Dead" (8.9mln). **ESPN** edged out **Fox News** for the No. 1 spot by a mere 23K average viewers. **MSNBC** (1.6mln), **Hallmark Channel** (1.3mln) and **USA** (1.3mln) rounded out the top five nets. Hallmark's ascent into the upper echelon can be attributed to the start of its "Countdown to Christmas" programming event, which featured the Saturday evening premiere of original feature "Marry Me at Christmas" (3.4mln). **Fox News** led the way in total day viewership last week with an average of 1.5mln viewers, followed by **Nickelodeon** (974K), **ESPN** (900K), **MSNBC** (891K) and **Hallmark** (820K). -- **Fox Business** is touting an October ratings victory over a rival, averaging 208K total day viewers compared to **CNBC's** 162K. "Lou Dobbs Tonight" was its most viewed program in the month with an average of 375K viewers.

Programming: **Paramount Network** and **Time Inc. Productions** are teaming up on a multi-project deal for non-scripted programming. Launching Jan 18, the partnership will feature series tied to the **Sports Illustrated** and **Entertainment Weekly** brands. "Sports Illustrated: True Crime" centers on the criminal activity of professional athletes. "Entertainment Weekly: The Bullseye," has also been ordered to pilot, acting as a late-night comedy talk show based on the magazine's column of the same name. -- **HBO** is debuting "Gunpowder," a three-part historical thriller detailing the lead-up to Guy Fawkes Day. *Kit Harington* is a descendant of *Robert Catesby*, the story's central figure, and plays him in the series. **Gunpowder** is set to debut Dec 18 at 10pm.

People: Ahead of **Tribune Media's** impending merger with **Sinclair**, *Bruce Karsh* has stepped down as chmn of the Tribune's Board of Directors. Tribune will not name a new member of the board until the Sinclair transaction is complete. -- **20th Century Fox** has elevated *Shari Rosenblum* and *Chris Kaspars* to svp and vp of publicity, respectively. Rosenblum has been with the studio since 2005, taking on publicity campaigns for hit series including "Homeland," "Modern Family" and "Arrested Development." Kaspars received the 2017 Maxwell Weinberg Publicist Showmanship Television Award for his work on the campaign for **NBC's** "This Is Us."