

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**IN RE JOHN N. GROSS**

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2013-1536

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Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Serial No. 11/369,796.

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**ON MOTION**

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Before RADER, *Chief Judge*, DYK and WALLACH, *Circuit Judges*.

WALLACH, *Circuit Judge*.

**O R D E R**

The parties jointly move to remand this appeal for further proceedings before the Patent Trial and Appeal Board.

John N. Gross appeals from a decision of the Board sustaining the examiner's rejection of claims 14 and 18 of his patent application for methods of allocating priority for playable media items over an electronic network between subscribers as obvious over a combination of prior art references Hastings, Pauliks and Hunt.

Gross argues in his opening brief that the obviousness rejections failed to account for the actual limitations in claims 14 and 18, including the step “wherein [a] common playable media item is taken from a limited subset of playable media items determined to be popular by the computing system among subscribers.” He states that the Board’s initial decision misquotes the limitations of that step, and argues that the Board failed to explain why these prior art references teach his methods as actually claimed.

The Director of the United States Patent and Trademark Office states that “it is in the best interest of the parties and this Court to remand the case back to the Board to reconsider the pending claims.” Because this court agrees with the parties that it would be best for all involved to remand this case to the Board for reconsideration of its obviousness rejections, the parties’ motion to remand the case for additional proceedings is granted.

Accordingly,

IT IS ORDERED THAT:

(1) The motion is granted. The case is remanded for additional proceedings consistent with this order.

(2) Each side shall bear its own costs.

FOR THE COURT

/s/ Daniel E. O’Toole  
Daniel E. O’Toole  
Clerk of Court

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ISSUED AS A MANDATE: January 31, 2014