

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ERICSSON INC. AND TELEFONAKTIEBOLAGET
LM ERICSSON (“Ericsson”),
Petitioner

v.

INTELLECTUAL VENTURES II LLC (“IV”),
Patent Owner

Patent 7,787,431

DECLARATION OF RANDALL C. SCHWARTZ

I, Randall C. Schwartz, do hereby make the following Declaration pursuant to 28 U.S.C. § 1746:

1. I am making this declaration at the request of Ericsson Inc. and Telefonaktiebolaget LM Ericsson (collectively “Ericsson”).

2. I am the Founder and Principle Consultant of Wireless 20/20 Consulting Group LLC, where I have been employed since 2005. I have worked as an electrical engineer since about 1983, and more specifically worked in the wireless field since 1992. I hold both an undergraduate and a graduate engineering degree from Dartmouth College.

3. From 2003 to 2005, I served as Strategic Planning Manager at Intel Corp. In this capacity, and among other responsibilities, I led Intel’s 802.16 standards effort. In connection with this work, I attended and participated in the IEEE 802.16 Working Group on Broadband Wireless Access Standards, where I analyzed contributions of others in order to further the development of the IEEE 802.16 standards.

4. The IEEE 802.16 Working Group is a public forum for collaboration and development of ideas among interested parties to develop standards and recommended practices to support the development and deployment of broadband Wireless Metropolitan Area Networks.

5. The IEEE 802.16 Working Group organized meetings periodically in conjunction with other IEEE 802 groups. As a matter of general practice, the IEEE 802.16 Working Group meetings that were organized were open to members and the general public. The IEEE 802.16 Working Group had a website, i.e., www.WirelessMAN.org, which could be viewed by members of the working group, IEEE members, or any other interested member of the general public. Information, agendas, and announcements about upcoming IEEE 802.16 Working Group meetings were posted on this website. For each IEEE 802.16 Working Group meeting (also called a “Session”), an attendance list was maintained to keep track of attendees for membership and credit purposes.

6. As a matter of general practice, documents and contributions were submitted before or during the IEEE 802.16 Working Group meetings. During the IEEE 802.16 Working Group meetings, each of the submitted documents and contributions was discussed, and when required, action was taken to determine the acceptance or viability of the contribution to the standard.

7. Due to the high volume of documents and contributions submitted, physical “paper” copies were not handed out during IEEE 802.16 Working Group meetings. Rather, the documents and contributions were made electronically available for download to attendees of the IEEE 802.16 Working Group meetings by way of the IEEE 802.16 website. The documents and contributions were not

subject to any confidentiality and could be freely disseminated by attendees to other interested persons of skill that had not attended the meetings. Because the documents and contributions were provided electronically, they were easier to share with interested colleagues or other interested persons – in fact, the IEEE 802.16 Working Group encouraged disseminating the submitted documents and contributions to further the development of the standard.

8. Also, during and after the IEEE 802.16 Working Group meetings, the submitted documents were publically accessible on the IEEE 802.16 website. Active members of the work groups were encouraged to review the documents before and during the 802.16 Working Group meetings. Any interested members of the general public could also freely access and download submitted documents and contributions without restrictions on dissemination, in real time similar to the access afforded the actual attendees of the work sessions.

9. As a matter of general practice, after each IEEE 802.16 Working Group meeting, a Session Report that included Session Minutes and session documents was created by the Chair and posted on the IEEE 802.16 website, to memorialize the specific meeting. These are also available on the 802.16 website for the general public to review. These were generally available within a week of the completion of each Working Group Session meeting.

10. I was employed by Intel Corp. on March 15-18 of 2004, when the IEEE 802.16 Working Group held the Session #30 meeting at the Hilton in the Walt Disney World Resort, in Lake Buena Vista (Orlando), Florida, USA. The Session #30 IEEE 802.16 Working Group meeting was held in conjunction with the IEEE 802 Plenary Session.

11. For the March 2004 Session #30 meeting, announcements were posted on the IEEE website that included information about the date and location of the meeting. Attached as Appendix A is the IEEE WirelessMAN 802.16 website snapshot from the WaybackMachine that evidences that at least as of February 7, 2004, the Session #30 meeting date and location information was announced publicly. I obtained Appendix A by first accessing the WaybackMachine page, at <http://archive.org/web/> , next performing a search for www.wirelessman.org , opening (or clicking on) the hyperlink for the year “2004,” next clicking on the hyperlink for February 7, then downloading and printing the resulting webpage.

12. Also, attached as Appendix B is a copy of the Session #28 Report dated November 18, 2003, evidencing that the Session #30 IEEE 802.16 Working Group meeting was publicly announced in that report. Specifically, Session #28 Report includes a section entitled “Future Matting’s” which announces that the “IEEE 802.16's Session #30 will take place in Orlando, FL, USA on 15-18 March 2004 in conjunction with the IEEE 802 Plenary Session.” I obtained Appendix B

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