

Filed on behalf of TQ Delta, LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC. and DISH NETWORK, LLC,
Petitioners

v.

TQ DELTA, LLC
Patent Owner

Case No. IPR2016-01006
Patent No. 7,835,430

PATENT OWNER'S RESPONSE UNDER 37 CFR §42.120

TABLE OF CONTENTS

I. INTRODUCTION 1

II. THE '430 PATENT 4

III. CLAIM CONSTRUCTION..... 6

IV. PETITIONERS HAVE NOT SHOWN UNPATENTABILITY
BASED ON THE SINGLE GROUND INSTITUTED 6

 A. The Asserted References Do Not Render Obvious
 Transmitting/Receiving a Test Message Comprising “*Idle
Channel Noise*”—Petitioner’ Theory Violates Several Legal
 Tenets8

 1. Milbrandt Teaches Away From Using Chang’s “Circuitry”
 For Measuring Background Noise.....9

 2. Petitioners Did Not Establish a Reasonable Expectation of
 Success in Just Using Chang’s Overall “Concept” of
 Measuring Background Noise in Some Other Manner16

 3. Incorporating Chang’s Background Noise Measurement
 Would Have Improperly Changed Milbrandt’s Fundamental
 Principle of Operation.....19

 4. Adding Any Method of Measuring Background Noise to
 Milbrandt Would Have Been Redundant and Unnecessary22

 A. No Weight Should Be Given to Unqualified Opinions of Petitioners’
 Expert.....26

V. CONCLUSION.....29

CERTIFICATE OF WORD COUNT30

EXHIBIT LIST

Ex. 2001	Declaration of Douglas Chrissan, PhD for Inter Partes Review Nos. IPR2016-01006, -01007, -01008, -01009
Ex. 2002	Hargrave's Communications Dictionary (2001) at pp. 404, 485
Ex. 2003	U.S. Pat. Pub. No. 20050190826
Ex. 2004	Webster's Unabridged Dictionary of the English Language (1989 ed.) at p. 1217
Ex. 2005	Transcript of 2/8/17 Deposition of Sayfe Kiaei
Ex. 2006	ITU-T G.992.1 (6/99) Series G: Transmission Systems and Media, Digital Systems and Networks – Asymmetric Digital Subscriber Line (ADSL) Transceivers

I. INTRODUCTION

Patent Owner TQ Delta, LLC (“Patent Owner”) submits this Response under 37 CFR §42.120 to the Petition filed by Cisco, Inc. requesting *inter partes* review of claims 1-6 of U.S. Pat. No. 7,835,430 (“the ’430 patent”). Dish Network LLC joined this proceeding pursuant to an order in 2017-00251 (Paper 10). Also pending in IPR2017-00420 is a Motion for Joinder to this proceeding filed by Comcast Cable Communications (which Patent Owner does not oppose); that Motion does not have a ruling.

The Board has instituted *inter partes* review in this proceeding based on a single Ground—alleged obviousness in view of a combination of Milbrandt, Chang, Hwang, and ANSI T1.413. Patent Owner, however, respectfully submits that for purposes of institution (1) the Board misapprehended or overlooked Patent Owner’s rebuttal arguments on non-obviousness and the controlling law with respect to those arguments, and (2) the Board accepted as true several unsupported factual statements by Petitioner’s expert that are wholly incorrect and contradicted by the asserted references themselves. Indeed, as shown by his testimony at his deposition, Petitioner’s expert (Dr. Kiaei) is unknowledgeable and unqualified regarding the technical issues in this proceeding. Therefore, Patent Owner provides additional detail, technical explanations from its own qualified expert (Dr. Chrissan), and further legal support to clarify these issues.

First, the Board misapprehended one of Patent Owner's arguments as to why it would not have been obvious to combine Chang's measurement of background noise with Milbrandt. Namely, the Petition itself specifically argued only that it allegedly would have been obvious to apply Chang's actual "background noise test circuitry" for measuring background noise to Milbrandt. (See Pet. at 15-17.) But Milbrandt specifically taught away (i.e., criticized and disparaged) any circuitry that required a technician visit and "truck roll"—which was the only type of circuitry disclosed in Chang. Milbrandt's disclosure in this regard falls squarely within the Federal Circuit's controlling law for a "teaching away"—the law does not require Milbrandt to expressly call out Chang by name in order to teach away from its undesirable technique.

Second, the Board overlooked and did not address in its Institution Decision several other reasons raised by Patent Owner for why it would not have been obvious to combine Chang's background noise measurement technique with Milbrandt. These reasons, which are explained and supported more fully in this Response by Patent Owner's expert, include that:

(a) applying Chang's only disclosed "circuitry" for measuring background noise (circuitry that required a technician visit and truck roll) would have improperly changed the fundamental principle of operation of Milbrandt;

(b) to the extent that Petitioners were somehow arguing that it would have

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