

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., DISH NETWORK, LLC,
COMCAST CABLE COMMUNICATIONS, LLC,
COX COMMUNICATIONS, INC.,
TIME WARNER CABLE ENTERPRISES LLC,
VERIZON SERVICES CORP., and ARRIS GROUP, INC.,
Petitioner,

v.

TQ DELTA, LLC,
Patent Owner.

Case IPR2016-01006¹
Patent No. 7,835,430 B2

PATENT OWNER'S MOTION FOR OBSERVATION

¹ DISH Network, L.L.C., who filed a Petition in IPR2017-00251, and Comcast Cable Communications, L.L.C., Cox Communications, Inc., Time Warner Cable Enterprises L.L.C., Verizon Services Corp., and ARRIS Group, Inc., who filed a Petition in IPR2017-00420, have been joined in this proceeding.

Patent Owner TQ Delta, LLC (“Patent Owner”) submits this motion for observation regarding cross-examination of Sayfe Kiaei, a reply declarant for Petitioners. Patent Owner submits the following Observation based on Dr. Kiaei’s testimony taken on June 26, 2017.

Observation #1: In Ex. 2011, page 135, line 6 to page 143, line 7, in response to a line of questioning regarding how the Chang reference discloses measuring background noise, Dr. Kiaei testified that it does so by generating a “known signal” or a “signal that’s reflected back.” When asked to point to such disclosure in Chang, Dr. Kaiei pointed to disclosure of measuring SNR rather than background noise and confirmed that the disclosure does not teach that measuring signal-to-noise ratio measures the background noise on the wire. *See* Ex. 2011, page 146, lines 9-20 (“Q. So that is what you’re pointing me to is labeled in Chang as a section called signal-to-noise ratio; is that correct? What you read back to me just now? A. That is one of the teachings of Chang that talks about another way of measuring signal by sending a tone from one end to another end to measure signal-to-noise ratio and based on that, looking at the background noise of the system.”); and Exhibit 2011, page 149, lines 6-9 (“Q. It [Chang at 12:59] does not say expressly signal-to-noise ratio measures the background noise on the wire. Is that correct? A. That is correct.”) This testimony is relevant because it undermines Dr.

Kiaei's credibility and his opinion that Chang's disclosure of measuring background noise is compatible with Milbrandt. *See* Ex. 1100 at ¶¶ 81-83.

Observation #2: In Ex. 2011, page 154, line 1 to page 157, line 4, in response to a line of questioning regarding where the Chang reference teaches or discloses any method for measuring background noise that does not require terminating the transmission line, Dr. Kiaei testified that he was only relying on Chang for its "general teachings of measuring idle channel noise." In particular, at page 156, lines 12 to 25, in response to a question regarding whether he was "relying on Chang only for the phrase 'background noise'", Dr. Kiaei testified that a POSITA would have "understood how to apply Chang's general teaching of measuring idle channel noise to Milbrandt" This testimony is relevant to Dr. Kiaei's opinion that Chang's "general teachings" would have rendered obvious other methods for measuring background noise that are not disclosed in Chang, because obviousness does not require "physical incorporation of elements." *See* Ex. 1100 at ¶¶ 72-73 ("The proposed combination looks to the teachings and does not require physical incorporation of elements. Persons of skill as of 1999 would have understood how to apply Chang's general teachings of measuring idle channel noise to Milbrandt's ADSL system").

Observation #3: In Ex. 2011 at pages 157, line 8 to page 158, line 23, Dr. Kiaei testified that “the factual basis” for his conclusion that “[a] POSITA would have understood how to apply Chang’s general teaching of measuring idle channel noise to Milbrandt ADSL without a physical incorporation of Chang’s elements” was that “[he] personally performed background noise measurements at different modes of the system when [he] was in Motorola.” He testified, however, that he would not discuss the nature of this alleged work at Motorola. *See id.* This testimony is relevant to Dr. Kiaei declaration testimony that: “Indeed, I personally measured idle channel noise in ADSL systems, as of 1999, in connection with my work. This was performed without a truck roll. Therefore, it is my opinion that, a POSITA would have found it within his or her technical grasp to predictably apply Chang’s teachings of measuring idle channel/background noise to Milbrandt’s ADSL system without physical incorporation.” Ex. 1100 at ¶ 73. This testimony is relevant because 37 C.F.R. § 42.65 states, *inter alia* that “Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight . . .”

Observation #4: In Ex. 2011, page 132, line 10 to page 134, line 15, in response to a line of questioning, with reference to Fig. 5 at page 24 of Ex. 1014, regarding whether, when no user data is transmitted in a DSL modem, the modem

will still transmit “idle packets” or “super frames” such that there is no idle period during which idle channel noise can be measured, Dr. Kiaei responded that he was unable to respond to those questions, did not “have an opinion on that,” and/or did not “remember.” Specifically, Dr. Kiaei testified that “what happened in idle protocol to deal with these issues I'm not prepared to answer, meaning the superframes and so on.” *Id.* page 134, lines 13-15. This testimony is relevant to Dr. Kiaei's declaration testimony that “Milbrant's ADSL modem will experience idle periods during the day—that is when the no information is being transmitted by the subscriber,” and idle channel/background noise measurement can be performed during these “idle periods.” Ex. 1100 at ¶ 82. This testimony is relevant because it undermines Dr. Kiaei's credibility and the accuracy of his opinions in at least paragraph 82 of his declaration.

Observation #5: In Ex. 2011, page 162, line 2 to page 165, line 9, Dr. Kiaei testified that at his prior deposition he was not able to identify any reason for measuring SNR at a subscriber modem rather than calculating it at the central office modem, but that he did provide such an opinion in his later reply declaration. This testimony is relevant because it undermines Dr. Kiaei's credibility and qualifications as an expert in DSL communications.

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