

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 7,835,430 B2

**PETITIONER'S RESPONSE TO PATENT OWNER'S MOTION FOR
OBSERVATION ON CROSS-EXAMINATION TESTIMONY**

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

This response is submitted in view of the Scheduling Order (Paper 8); the Notice of Parties' Stipulation Regarding Scheduling Order, submitted June 28, 2017 (Paper 23); and the Trial Practice Guide, 77 Fed. Reg. 48756, 48767–68 (Aug. 14, 2012). This paper responds to Patent Owner's Motion for Observation on Cross-examination (Paper 32) filed on July 5, 2017, in the present *inter partes* review. Patent Owner presented six (6) observations on the June 26, 2017, deposition testimony of Dr. Kiaei (Ex. 2011). Although Petitioner responds to each of Patent Owner's observations below, the Board should deny Patent Owner's motion because the observations contain at least one of the following deficiencies: (1) they fail to identify the relevant issue; (2) they are not relevant to any issue; (3) they include attorney argument, and; (4) they mischaracterize Dr. Kiaei's testimony.

Response to Observation 1:

Patent Owner's observation omits Dr. Kiaei's testimony that Chang taught multiple ways to measure background noise.

Q. But it is your position that to measure background noise you have to transmit a signal and measure the reflection back. Isn't that what you said?

A. You mischaracterized what I said, Counsel. I said there are different methodologies -- three different methods in this patent [Chang] I discussed that talks

about these different methods. These different teachings can be used in general to -- for measuring the background noise.

Ex. 2011, 153:16-25. Also, Patent Owner's citation is incomplete since it omits relevant portions of Dr. Kiaei's testimony that supports Petitioner's position (see Petition, Paper 2, 19; Reply, Paper 17, 14-15) that a POSITA would have known how to apply Chang's general teachings of measuring idle channel noise to Milbrandt's ADSL system, without physical incorporation of elements. Ex. 2011, 16-:6-22 ("Actually, TQ Delta's expert, Dr. Chrissan, also agrees with the specification of the patent at issue, did not disclose how to determine idle channel noise, and that was well known how to measure idle channel noise without a truck roll."); see also Ex. 2011, 157:10-22 ("I personally performed background noise measurements at different modes of the system when I was in Motorola and ADSL. I was aware of many other vendors that performed the same thing, both during the DSL standards as well as the interactions we had with different customers. It's based on my experience of being in the field for the past 35 years and knowing that these general teachings could apply to different methods. I would be able to hand this patent to one of my students and say go and come up with the methodologies based on his method of measuring background noise.")

Response to Observation 2:

Patent Owner's citation to Dr. Kiaei's testimony (Ex. 2011, 154:1-157:4) is consistent with Petitioner's position (*see* Petition, Paper 2, 19; Reply, Paper 17, 14-15) that a POSITA would have known how to apply Chang's general teachings of measuring idle channel noise to Milbrandt's ADSL system, without physical incorporation of elements. Patent Owner also omits other relevant portions of Dr. Kiaei's testimony stating that both experts agree that it was well known how to measure idle channel noise. Ex. 2011, 160:6-22 ("Actually, TQ Delta's expert, Dr. Chrissan, also agrees with the specification of the patent at issue, did not disclose how to determine idle channel noise, and that was well known how to measure idle channel noise without a truck roll.").

Response to Observation 3:

Contrary to Patent Owner's observation, "the factual basis" for Dr. Kiaei's position that a POSITA would have known "how to apply Chang's general teaching of measuring idle channel noise to Milbrandt ADSL without a physical incorporation of Chang's elements," is demonstrated by his deposition testimony. Ex. 2011, 157:10-22 ("I personally performed background noise measurements at different modes of the system when I was in Motorola and ADSL. I was aware of many other vendors that performed the same thing.") Further, Patent Owner's contention that Dr. Kiaei "would not discuss the nature of his work at Motorola"

mischaracterizes the testimony. Ex. 2011, 159:8-18 (“A. We had a working DSL.

We had a -- which many customers used it. I was in charge of the system engineering for the DSL and I have personally experience in there.”) Patent Owner's citation is also incomplete since it omits other relevant portions of Dr. Kiaei's testimony, which demonstrate that it was well known how to measure idle channel noise. Ex. 2011, 160:6-22 (“Actually, TQ Delta's expert, Dr. Chrissan, also agrees with the specification of the patent at issue, did not disclose how to determine idle channel noise, and that was well known how to measure idle channel noise without a truck roll.”)

Response to Observation 4:

Patent Owner's observation pertaining to “idle packets” disclosed in Ex. 1014 (ANSI T1.413 standard) is not relevant to Petitioner's combination which addressed the “idle channel noise” claim limitation with the combination of Milbrandt and Chang—not ANSI T1.413. *See*, Petition, Paper 2, 15-16 and 29. Also, Patent Owner did not afford Dr. Kiaei an opportunity to review the relevant portion of the ANSI T1.413, to answer the question. Ex. 2011, 131:15-22, 133:13-18 (“Q. Are you familiar with this generally? A. Yes. Q. Okay. A. In general, yes, but I haven't looked at it recently.” “Can you measure idle channel noise while these superframes are being transmitted? MR. EMERSON: Object to the scope. THE WITNESS: I'd have to look at the details of the superframes and how it's

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