Filed on behalf of TQ Delta, LLC
By: Peter J. McAndrews
Thomas J. Wimbiscus
Scott P. McBride
Christopher M. Scharff
Andrew B. Karp
McAndrews, Held & Malloy, Ltd.
500 W. Madison St., 34th Floor
Chicago, IL 60661
Tel: 312-775-8000
Fax: 312-775-8100
E-mail: pmcandrews@mcandrews-ip.com

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. IPR2016-01020
Patent No. 9,014,243

PATENT OWNER RESPONSE UNDER 37 CFR § 42.120

TABLE OF CONTENTS

I. INTRODUCTION

Patent Owner TQ Delta, LLC submits this Patent Owner Response under 37 CFR §42.120 to the Petition filed by Cisco, Inc. requesting *inter partes* review for claims 1–25 of U.S. Pat. No. 9,014,243 ("the '243 patent").

The Board instituted *inter partes* review on two grounds:

1. whether claims 1–3, 7–9, 13–16, and 20–22 of the '243 patent are unpatentable under 35 U.S.C. § 103(a) over U.S. Pat. No. 6,144,696 ("Shively") and U.S. Pat. No. 6,625,219 ("Stopler"); and

2. whether claims 4–6, 10–12, 17–19, and 23–25 of the '243 patent are unpatentable under 35 U.S.C. § 103(a) over Shively, Stopler, and U.S. Pat. No. 6,424,646 ("Gerszberg").

After institution, additional parties—including: Dish Network, LLC; Comcast Cable Communications, LLC; Cox Communications, Inc.; Time Warner Cable Enterprises LLC; Verizon Services Corp.; and ARRIS Group, Inc.—filed petitions that are identical in all substantive respects to the Cisco Petition. *See* IPR2017-00254 and IPR2017-00418. These additional parties moved to join as petitioners, and collectively with Cisco, are referred to herein as "Petitioners." For brevity, this Patent Owner response will cite only to the Cisco Petition and its corresponding exhibits.

In the Institution Decision, the Board did not reach the merits of Patent Owner's arguments in the Patent Owner Preliminary Response, but rather

characterized them as "attorney argument" and accepted Petitioners' expert declarant's testimony as true because Patent Owner did not support it's argument with expert testimony. This Patent Owner Response is fully supported by the cited evidence, including the declaration of Dr. Robert T. Short.

The Petition fails to prove, by a preponderance of the evidence, that any claim of the '243 patent is unpatentable because there is no credible or accurate evidence demonstrating why one having ordinary skill in the art would have combined Shively and Stopler. Petitioners' rationale for the combination fundamentally relies on the contention that Shively suffers from a problem (*i.e.*, a problem with its "peak-to-average power ratio" or "PAR") that Stopler solves the purported problem by performing "phase scrambling." But, Shively does not have a PAR problem so there would have been no motivation to look for a solution.

Furthermore, Stopler does not disclose phase scrambling as recited in the claims.

Petitioners misunderstand the teachings of these references, make unsupported assumptions having no basis in fact, and, ultimately rely on only hindsight bias to cobble together the references.

As such, Petitioners' grounds for alleged obviousness fail. Patent Owner respectfully requests that the Board issue a Final Written Decision finding that Petitioners did not meet their burden to prove unpatentability of claims 1–25 of the

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.