

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

PATENT OWNER RESPONSE UNDER 37 CFR § 42.120

TABLE OF CONTENTS

I. INTRODUCTION 1

II. INTRODUCTION TO TECHNOLOGICAL CONCEPTS 3

 A. Multicarrier Systems 3

 B. Peak-to-Average Power Ratio (“PAR”)..... 5

 C. PAR “Problem” 7

 D. A Note On Terminology 11

III. CLAIM CONSTRUCTION 13

 A. “Multicarrier” 13

 B. “Transceiver” 13

 C. “Scrambling...a Plurality of Carrier Phases” 14

IV. OVERVIEW OF ASSERTED REFERENCES—SHIVELY AND STOPLER 19

 A. Shively 19

 B. Stopler 29

V. PETITIONERS HAVE NOT PROVEN UNPATENTABILITY FOR THE CLAIMS OF THE ’243 PATENT 44

 A. Petitioners’ Argued Reasons To Combine Shively And Stopler Are Without A Rational Basis, Based On Factual Errors, And Suffer From Hindsight Bias 45

 1. Petitioners Provide No Explanation For The “Use Of A Known Technique To Improve A Similar Device” Rationale To Combine Shively And Stopler 45

 2. Petitioners Wrongly Claim That Shively’s Transmitter Suffers From An Increased PAR 47

3.	Petitioners’ Justification For Combining Shively And Stopler Uses The ’243 Patent As A Roadmap And Suffers From Hindsight Bias	49
4.	There Is No Need To Solve Shively’s Non-Existent PAR Problem	50
5.	Stopler Does Not Reduce PAR In A Multicarrier Transmitter	51
6.	Stopler And Shively Could Not Be Combined.....	51
7.	There Were No “Market Forces” In Effect To Prompt The Combination Of Shively’s And Stopler’s Techniques	55
B.	Stopler Does Not Disclose Phase Scrambling	57
VI.	CONCLUSION.....	59
	CERTIFICATE OF WORD COUNT	60

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

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