

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, IPR 2016-01006, 2016-01007,
-v- 2016-01008, 2016-01009,
TQ DELTA, LLC, 2016-01020, 2016-01021
Patent Owner.

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TRANSCRIPT OF PROCEEDINGS had of the telephonic
conference call of the above-entitled matter on the 21st
day of June 2017, at 3:00 p.m. EST.

BEFORE: HONORABLE KALYAN DESHPANDE
HONORABLE TREVOR JEFFERSON
HONORABLE SALLY MEDLEY

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1 RECORD
 2 JUDGE MEDLEY: Good afternoon. This is
 3 Judge Medley. On the call with me are Judges
 4 Deshpande and Jefferson. This is a conference call
 5 regarding IPR 2016-01006, -01007, -01008, -01009,
 6 -1020, and -0121, Cisco Systems vs. TQ Delta.
 7 Who is on the call for Petitioner?
 8 MR. McCOMBS: Judge Medley, this is David
 9 McCombs for Cisco Systems along with Gregory Huh
 10 and Theo Foster.
 11 JUDGE MEDLEY: Thank you.
 12 And for Patent Owner?
 13 MR. McANDREWS: Yes, Your Honor, this is
 14 Peter McAndrews, and I have with me Scott McBride,
 15 Chris Scharff and Andrew Karp.
 16 JUDGE MEDLEY: Okay. We understand that
 17 Patent Owner requests authorization to file motions
 18 to strike the replies in the six proceedings or
 19 authorization to file surreplies in each of the six
 20 proceedings. And so we'll begin with Patent
 21 Owner's explanation stating specifically the basis
 22 for the requested relief.
 23 MR. McANDREWS: Yes, Your Honor.
 24 The Petitioner in their replies have

1 raised a large number of new arguments and had
 2 submitted quite a bit of new evidence. It's
 3 evidence that patent owner could not have
 4 anticipated and has not had an opportunity to
 5 address or submit counterevidence to.
 6 Examples of what has been submitted here
 7 are, for example, Petitioner makes a conclusory
 8 statement in their petition, we point out that it's
 9 conclusory and unsupported, and rather than
 10 responding to that argument by pointing out where
 11 in the record the argument is made specific or
 12 supported by the evidence, they instead submit a
 13 new specific argument and new evidence.
 14 Another example would be where we have
 15 pointed out that the argument that they present is
 16 incorrect, and rather than coming back and
 17 explaining why their argument was correct, they've
 18 instead changed their argument. They changed it
 19 into something completely different that could not
 20 have been addressed by the Patent Owner in the
 21 first instance.
 22 Additionally, there are instances where
 23 we have pointed out that they had no evidence for
 24 an assertion, and rather than coming back and

Page 6

1 explaining where that evidence is in the record for
 2 the assertion, they had submitted new evidence, new
 3 evidence that we have not had an adequate
 4 opportunity to respond to or to, for example,
 5 submit our own expert's interpretation of that
 6 evidence.
 7 I can provide some specific instances of
 8 where this has occurred; however, just in
 9 summary -- and we've put this in an email to
 10 Petitioner's counsel -- we listed -- for the 1006
 11 and 1009 proceedings we've listed four new
 12 arguments, four instances of new argument or new
 13 evidence, for the 1007, 1008, and then also for the
 14 1009, because it has some additional arguments,
 15 we've listed eight new instances of new evidence or
 16 new argument, and then for the 1021 and 1020
 17 proceedings we've listed six separate instances of
 18 new argument or evidence.
 19 I could go through those or I could give
 20 you a couple anecdotal versions of those, but I
 21 believe that the more efficient way to get a proper
 22 record before the panel would be to allow
 23 Petitioner to submit these in writing in summary
 24 format as a precursor to determining whether we

Page 7

1 would be allowed to file a motion to strike or the
 2 surreply if the panel believed that's necessary as
 3 a threshold to allowing us to file a motion to
 4 strike or in the alternative to reply in the first
 5 place.
 6 JUDGE MEDLEY: Okay, I understand.
 7 I think -- so you've probably -- before
 8 we heard from Petitioner, you probably both are
 9 familiar with both procedures sometimes when this
 10 issue -- this type of thing comes up that the Board
 11 sometimes will allow the parties to file a listing
 12 like you are proposing, Patent Owner?
 13 MR. McANDREWS: Yes, Your Honor, we've
 14 seen that listing in other cases, and that is what
 15 I'm referring to.
 16 JUDGE MEDLEY: So that kind of is a
 17 precursor to help us to figure out how to proceed.
 18 And just -- as both parties know, I mean,
 19 we appreciate the help, but we understand that --
 20 you know, our own rules which, you know, are
 21 replies only able to respond to arguments raised in
 22 a corresponding opposition or a Patent Owner
 23 response, and it's not supposed to make, you know,
 24 a person's case. So we're aware of that, and, you

Page 8

1 know, we -- but the listing might help us in such a
 2 situation as this.
 3 So we'll hear from Petitioner at this
 4 time.
 5 MR. McANDREWS: Your Honor, I apologize.
 6 This is Peter McAndrews. If I might add one
 7 additional thing about the listing?
 8 The listing that we have seen -- and,
 9 granted, I haven't, you know, done thorough enough
 10 research to know that I've seen all of them -- but
 11 if a listing is allowed, what I've seen is that
 12 there's a listing by Patent Owner of the arguments
 13 that are allegedly new, and then the responsive
 14 listing for whatever reason which required to show
 15 where -- why the reply is responsive to something
 16 in the Patent Owner response. But that's really
 17 not the issue, the issue is whether the reply
 18 includes new evidence that should have been
 19 presented in the petition.
 20 I just wanted to point that out, Your
 21 Honor, just in the event that you had a particular
 22 type of listing in response to the listing in mind.
 23 JUDGE MEDLEY: Right. And I think it's
 24 listings that are generally that I'm aware of is

Page 9

1 because the Petitioner's response to the
 2 allegation, if you will, is that, well, our -- you
 3 know, it was necessitated. We had to -- you know,
 4 we couldn't have anticipated a type of argument.
 5 So -- but I understand what you're saying.
 6 Okay, so we'll hear from Petitioner.
 7 MR. McCOMBS: Yes, Your Honor.
 8 Judge Medley, first of all I'd just point
 9 out that our position is that our petition replies
 10 are fully compliant with Rule 42.23(b) and that we
 11 understand that the arguments that we raise are
 12 supposed to be responding to the arguments raised
 13 in the Patent Owner response, and that is what we
 14 have done. We believe that the Board is fully
 15 capable of evaluating that in reviewing the
 16 replies.
 17 JUDGE MEDLEY: Okay. That's all you
 18 have?
 19 So if we authorize them to file a
 20 listing, would you want to file a responsive
 21 listing?
 22 MR. McCOMBS: Yes, Your Honor. I don't
 23 think we have an objection to the list format,
 24 we've seen that in other cases, I would just like

Page 10

1 to make clear on the record that this should not be
 2 a substitute for additional briefing and that a
 3 list is a list.
 4 JUDGE MEDLEY: Right.
 5 MR. McCOMBS: And if that is what the
 6 Board has in mind, we're fully capable of providing
 7 a response to such a list.
 8 JUDGE MEDLEY: Okay. All right. Let me
 9 put you on hold and the panel will confer.
 10 Do either of the parties have anything
 11 else to add?
 12 MR. McANDREWS: Your Honor, yes. This is
 13 Peter McAndrews for Patent Owner.
 14 One concern that we had with merely
 15 providing a listing at this time is that there's
 16 going to be some time delay here, and,
 17 unfortunately, we find ourselves in the situation
 18 where we are less than six weeks to the trial date,
 19 to the oral hearing date, and we have to cover a
 20 number of things between now and then, including,
 21 you know, we're cross-examining witnesses and, you
 22 know, we have authorizations that will become due.
 23 And so if the turn-around on this listing
 24 and then Your Honor's decision on whether we can

Page 11

1 even file a motion to strike in the first instance
 2 causes significant delay, this is going to be
 3 difficult for us to pull off in the limited amount
 4 of time.
 5 And so I'd just like to make a request
 6 that Patent Owner would prefer to be allowed to go
 7 right to the motion to strike where, of course, we
 8 would provide a summary listing up front of the
 9 issues, but then it would immediately provide, you
 10 know, the reasons why we believe each of these
 11 issues are new and should have been raised and are
 12 violative of the trial guide in CFR.
 13 JUDGE MEDLEY: Okay, I understand, and
 14 I'm sure Petitioner opposes that.
 15 MR. McCOMBS: Yes, Your Honor.
 16 JUDGE MEDLEY: All right. So let us
 17 confer for a few minutes, and then we'll get back
 18 online.
 19 (Discussion held off the record.)
 20 JUDGE MEDLEY: Okay, this is Judge Medley
 21 back online.
 22 We've conferred. We think at this point
 23 that the best thing to do is for us to receive the
 24 list from both parties. Today we haven't really

Page 12

1 heard anything that would compel us to authorize a
 2 motion to strike and/or a motion for surreplies.
 3 So it might be that we just receive the
 4 list and that we use that as kind of a placeholder
 5 so that when we decide the cases, we can reference
 6 those lists and then determine whether, you know,
 7 on our own whether the arguments and the reply go
 8 beyond the scope of what should be in a reply.
 9 So we'll allow both parties to file a
 10 list in serial succession. So, Patent Owner, you
 11 will file your list followed by Petitioner's list.
 12 And we'll send out an order probably by tomorrow.
 13 Are there any questions?
 14 MR. McANDREWS: Yes, Your Honor. For
 15 Patent Owner it sounds like based on the timing of
 16 this that this will preclude Patent Owner from
 17 submitting a surreply. In the event that the Board
 18 were to determine that this is not new argument at
 19 a later date, it would have eliminated our ability
 20 to then file a surreply.
 21 JUDGE MEDLEY: Yeah, we're capable of
 22 asking for briefing at any time. I mean, even if
 23 we get to oral argument and we determine that we
 24 want more briefing we can ask for more briefing.

Page 13


1 So I don't think that's a concern right now, I
 2 think we just need a starting point to see what
 3 you're talking about and then we can go from there.
 4 Any other questions?
 5 MR. McCOMBS: Not from Petitioner. Thank
 6 you.
 7 JUDGE MEDLEY: Okay, thank you. We are
 8 adjourned.
 9 MR. McANDREWS: Your Honor, I apologize.
 10 Peter McAndrews. The timing of this?
 11 JUDGE MEDLEY: Uh-huh. It will be short.
 12 If we send out an order tomorrow, Patent Owner will
 13 probably need to get in their list by, you know,
 14 I'd say mid next week and followed by Petitioner's
 15 list three or four days after that.
 16 Okay. Any other questions?
 17 All right, thank you. We are adjourned.
 18 MR. McCOMBS: Thank you.
 19 MR. McANDREWS: Thank you.
 20 (Record closed at 3:16 p.m. EST)
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CERTIFICATE OF NOTARY PUBLIC

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I certify that this transcript, consisting of 14 pages,
is a complete, true, and correct transcript of the
telephonic conference call proceedings taken in this
case on June 21, 2017.

June 23, 2017



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