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.

TRANSCIPT 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 APPEARANCES: 2 HAYNES & BOONE, LLP 3 2323 Victory Avenue, Suite 700 4 Dallas, Texas 75219 5 (214)651-5533, by: 6 MR. DAVID L. McCOMBS 6 david, mccombs, ipr@haynesboone.com, and 8 MR. THEODORE M. FOSTER 9 ipr.theo.foster@haynesboone.com 10 MR. GREGORY P. HUH 11 gregory.hub.ipr@haynesboone.com 11 and Theo Foster 12 Appearing on Behalf of Petitioner Cisco 13 Systems, Inc. 14 14 15 COOLEY, LLP 15 COOLEY, LLP 16 1299 Pennsylvania Avenue, NW, Suite 700 17 Washington, DC 20004 18 (703)456-8130, by: 19 MR. STEPHEN McBRIDE 20 smcbride@cooley.com 21 Appearing on Behalf of Petitioner 22 Dish Network, LLC 23 McANDREWS HELD & MALLOY, LTD. 3 McANDREWS HELD & MALLOY, LTD. 4 500 West Madison Street, 34th Floor 5 Chicago, Illinois 60661 6 (312)775-8000, by: 8 pmcandrews@mcandrews-ip.com, and 10 MR. ANDREW KARP 11 MR. NONEW KARP 12 ARD PETER J. McANDREWS 8 pmcandrews@mcandrews-ip.com, and 11 MR. ANDREW KARP 12 ARD PETER J. McANDREWS 12 ANDREWS HELD 13 MR. SCOTT McBRIDE 14 MR. ANDREW KARP 15 Cooler McR. DECOMBREA J. Submitted pute a bit of new evidence. It's evidence that patent owner could not have anticipated and has not had an opportunity to address or submit countervidence of a conclusory statement in their petition, we point out that it's conclusory and unsupported by the evidence, and a responding to that argument is made specific or supported by the evidence, wistered and new evidence. 12 westerifically the basis for the requested relief. 13 MR. SCOTT McBRIDE 14 MR. ANDREW KARP 15 MAR PETER J. McANDREWS 16 MR. PETER J. McANDREWS 17 MR. ANDREW KARP 18 MR. ANDREW KARP 19 MR. ANDREW KARP 10 Cooler McBRIDE 11 MR. ANDREW KARP 11 MR. ANDREW KARP 12 ARB PETER J. McANDREWS 12 MR. McCMBS: Yes, Your Honor. This is Judge Medley. Union of the surplease and place and has not had an opportunity to address or submit countervidence and rather than responding to that argument is made specific or supported by the evidence, wistered with in the record the argument is made specific or supported by the evidence, wistered and new evidence.		Page 2		Page 4
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david.mccombs.ipr@haynesboone.com, and MR. THEODORE M. FOSTER pipr.theo.foster@haynesboone.com, and MR. GREGORY P. HUH gregory.huh.ipr@haynesboone.com Appearing on Behalf of Petitioner Cisco Systems, Inc. Appearing on Behalf of Petitioner Cisco Systems, Inc. COOLEY, LLP 15 COOLEY, LLP 16 1299 Pennsylvania Avenue, NW, Suite 700 17 Washington, DC 20004 18 (703)456-8130, by: MR. STEPHEN McBRIDE Smcbride@cooley.com Appearing on Behalf of Petitioner Dish Network, LLC Page 3 APPEARANCES, CONTINUED: Page 3 APPEARANCES, CONTINUED: Page 3 APPEARANCES, CONTINUED: APPEARANCES, CONTINUED: APPEAR MALLOY, LTD. SOOWESH Madison Street, 34th Floor Chicago, Illinois 60661 G (312)775-8000, by: MR. ACHRISTOPHER SCHARFF Cscharff@mcandrews-ip.com, and MR. ANDREW KARP ARP MCANDREWS is meandrews-ip.com, and MR. ANDREW KARP ARPE MCARIBE ARPEGRANCES, CONTIMEED ARR. MCANDREWS is not he call for Petitioner? MR. McCombs: McCombs for Cisco Systems along with Gregory Hul Ad MR. ANDREW KARP Add Theo Foster. MR. McCombs: Judge Medley, this is David and Theo Foster. MR. McCombs for Cisco Systems along with Gregory Hul and Theo Foster. MR. McCombs: Judge McCombs for Cisco Systems along with Gregory Hul and Theo Foster. MR. McCombs: Judge McCombs for Cisco Systems along with Gregory Hul and Theo Foster. MR. McCombs: Judge McCombs for Cisco Systems along with Gregory Hul and Theo Foster. MR. McAndrews: Judge McCombs for Cisco Systems along with Gregory Hul and Theo Foster. JUDGE MEDLEY: Okay. We understand tha Feter McAndrews Karp. JUDGE MeDLEY: Okay. We understand tha Feter McAndrews Karp. JUDGE MeDLEY: Okay. We understand tha Feter McAndrews All have with me Scott McBride JUDGE MeDLEY: Okay. We understand tha Feter McAndrew Karp. JUDGE MeDLEY: Okay. We understand tha Feter McAndrew Karp. JUDGE MeDLEY: Okay. We understand tha Feter McAndrew Karp. JUDGE MeDLEY: Okay. We understand tha Feter McAndrew Karp. JUDGE MeDLEY: Okay. We understand tha Feter McAndrew Karp. JUDGE MeDLEY: Okay. We understand tha Feter McAndre		The state of the s		
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18 (703)456-8130, by: 19 MR. STEPHEN McBRIDE 20 smcbride@cooley.com 21 Appearing on Behalf of Petitioner 21 Appearing on Behalf of Petitioner 22 Dish Network, LLC 23 BAPPEARANCES, CONTINUED: 24 Page 3 25 APPEARANCES, CONTINUED: 26 APPEARANCES, CONTINUED: 27 Taised a large number of new arguments and has submitted quite a bit of new evidence. It's evidence that patent owner could not have anticipated and has not had an opportunity to address or submit counterevidence to. 26 (312)775-8000, by: 27 MR. PETER J. McANDREWS 28 pmcandrews-ip.com, and MR. CHRISTOPHER SCHARFF or submitted many proceedings or authorization to file surreplies in the six proceedings or authorization to file surreplies in each of the six proceedings. And so we'll begin with Patent Owner's explanation stating specifically the basis for the requested relief. 29 MR. McANDREWS: Yes, Your Honor. 20 The Petitioner in their replies have Page 3 Page 4 20 Dish Network, LLC 21 Owner's explanation stating specifically the basis for the requested relief. 22 MR. McANDREWS: Yes, Your Honor. 23 The Petitioner in their replies have Page 4 24 Evidence that patent owner could not have anticipated and has not had an opportunity to address or submit counterevidence to. 25 Examples of what has been submitted her are, for example, Petitioner makes a conclusory statement in their petition, we point out that it's conclusory and unsupported, and rather than responding to that argument by pointing out whin the record the argument is made specific or supported by the evidence, they instead submit a new specific argument and new evidence.		· · · · · · · · · · · · · · · · · · ·		
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7 MR. PETER J. McANDREWS 8 pmcandrews@mcandrews-ip.com, and 9 MR. CHRISTOPHER SCHARFF 10 cscharff@mcandrews-ip.com, and 11 MR. ANDREW KARP 12 akarp@mcandrews-ip.com, and 13 MR. SCOTT McBRIDE 14 smcbride@mcandrews.ip.com 15 MR. ANDREW Karp 16 are, for example, Petitioner makes a conclusory statement in their petition, we point out that it's conclusory and unsupported, and rather than responding to that argument by pointing out who in the record the argument is made specific or supported by the evidence, they instead submit a new specific argument and new evidence.	5	Chicago, Illinois 60661	5	address or submit counterevidence to.
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9 MR. CHRISTOPHER SCHARFF 10 cscharff@mcandrews-ip.com, and 11 MR. ANDREW KARP 12 akarp@mcandrews-ip.com, and 13 MR. SCOTT McBRIDE 14 smcbride@mcandrews.ip.com 15 statistic in the petiton, we point out that its conclusory and unsupported, and rather than responding to that argument by pointing out who in the record the argument is made specific or supported by the evidence, they instead submit a new specific argument and new evidence.			7	are, for example, Petitioner makes a conclusory
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11 MR. ANDREW KARP 12 akarp@mcandrews-ip.com, and 13 MR. SCOTT McBRIDE 14 smcbride@mcandrews.ip.com 15 responding to that argument by pointing out with responding to that argument is made specific or supported by the evidence, they instead submit a new specific argument and new evidence.			9	conclusory and unsupported, and rather than
12 akarp@mcandrews-ip.com, and 13 MR. SCOTT McBRIDE 14 smcbride@mcandrews.ip.com 15 In the record the argument is made specific or 16 supported by the evidence, they instead submit a new specific argument and new evidence.			10	responding to that argument by pointing out where
13 MR. SCOTT McBRIDE supported by the evidence, they instead submit a new specific argument and new evidence.			11	in the record the argument is made specific or
14 smcbride@mcandrews.in.com			12	supported by the evidence, they instead submit a
1 4 Another example would be where we have			13	new specific argument and new evidence.
15 Anomer example would be where we have		sinconde@incandrews-ip.com,	14	Another example would be where we have
Appearing on Behalf of Patent Owner 15 pointed out that the argument that they present i	1.0	Appearing on Rehalf of Patent Owner	15	pointed out that the argument that they present is
16 incorrect, and rather than coming back and	16	Appearing on Bendin of Latent Owner		
17 explaining why their argument was correct, they			17	explaining why their argument was correct, they've
18 instead changed their argument. They changed			18	instead changed their argument. They changed it
19 into something completely different that could n				into something completely different that could not
			20	have been addressed by the Patent Owner in the
21 first instance.				first instance.
22 Additionally, there are instances where				
	23	REPORTED BY: SUZANNE DUDA		we have pointed out that they had no evidence for
24 CSR-3199, RPR, CRR 24 an assertion, and rather than coming back and	24	CSR-3199, RPR, CRR	24	an assertion, and rather than coming back and

2 (Pages 2 to 5)





	Page 6		Page 8
1	explaining where that evidence is in the record for	1	know, we but the listing might help us in such a
2	the assertion, they had submitted new evidence, new	2	situation as this.
3	evidence that we have not had an adequate	3	So we'll hear from Petitioner at this
4	opportunity to respond to or to, for example,	4	time.
5	submit our own expert's interpretation of that	5	MR. McANDREWS: Your Honor, I apologize.
6	evidence.	6	This is Peter McAndrews. If I might add one
7	I can provide some specific instances of	7	additional thing about the listing?
8	where this has occurred; however, just in	8	The listing that we have seen and,
9	summary and we've put this in an email to	9	granted, I haven't, you know, done thorough enough
10	Petitioner's counsel we listed for the 1006	10	research to know that I've seen all of them but
11	and 1009 proceedings we've listed four new	11	if a listing is allowed, what I've seen is that
12	arguments, four instances of new argument or new	12	there's a listing by Patent Owner of the arguments
13	evidence, for the 1007, 1008, and then also for the	13	that are allegedly new, and then the responsive
14	1009, because it has some additional arguments,	14	listing for whatever reason which required to show
15	we've listed eight new instances of new evidence or	15	where why the reply is responsive to something
16	new argument, and then for the 1021 and 1020	16	in the Patent Owner response. But that's really
17	proceedings we've listed six separate instances of	17	not the issue, the issue is whether the reply
18	new argument or evidence.	18	includes new evidence that should have been
19	I could go through those or I could give	19	presented in the petition.
20	you a couple anecdotal versions of those, but I	20	I just wanted to point that out, Your
21	believe that the more efficient way to get a proper	21	Honor, just in the event that you had a particular
22	record before the panel would be to allow	22	type of listing in response to the listing in mind.
23	Petitioner to submit these in writing in summary	23	JUDGE MEDLEY: Right. And I think it's
24	format as a precursor to determining whether we	24	listings that are generally that I'm aware of is
		1	
	Page 7		Page 9
1	Page 7 would be allowed to file a motion to strike or the	1	Page 9 because the Petitioner's response to the
1 2	_	1 2	
	would be allowed to file a motion to strike or the		because the Petitioner's response to the
2	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as	2	because the Petitioner's response to the allegation, if you will, is that, well, our you
2	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as a threshold to allowing us to file a motion to	2 3	because the Petitioner's response to the allegation, if you will, is that, well, our you know, it was necessitated. We had to you know,
2 3 4	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as a threshold to allowing us to file a motion to strike or in the alternative to reply in the first	2 3 4	because the Petitioner's response to the allegation, if you will, is that, well, our you know, it was necessitated. We had to you know, we couldn't have anticipated a type of argument.
2 3 4 5	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as a threshold to allowing us to file a motion to strike or in the alternative to reply in the first place.	2 3 4 5	because the Petitioner's response to the allegation, if you will, is that, well, our you know, it was necessitated. We had to you know, we couldn't have anticipated a type of argument. So but I understand what you're saying.
2 3 4 5 6	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as a threshold to allowing us to file a motion to strike or in the alternative to reply in the first place. JUDGE MEDLEY: Okay, I understand.	2 3 4 5 6	because the Petitioner's response to the allegation, if you will, is that, well, our you know, it was necessitated. We had to you know, we couldn't have anticipated a type of argument. So but I understand what you're saying. Okay, so we'll hear from Petitioner.
2 3 4 5 6 7	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as a threshold to allowing us to file a motion to strike or in the alternative to reply in the first place. JUDGE MEDLEY: Okay, I understand. I think – so you've probably before	2 3 4 5 6 7	because the Petitioner's response to the allegation, if you will, is that, well, our you know, it was necessitated. We had to you know, we couldn't have anticipated a type of argument. So but I understand what you're saying. Okay, so we'll hear from Petitioner. MR. McCOMBS: Yes, Your Honor.
2 3 4 5 6 7 8	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as a threshold to allowing us to file a motion to strike or in the alternative to reply in the first place. JUDGE MEDLEY: Okay, I understand. I think — so you've probably — before we heard from Petitioner, you probably both are	2 3 4 5 6 7 8	because the Petitioner's response to the allegation, if you will, is that, well, our you know, it was necessitated. We had to you know, we couldn't have anticipated a type of argument. So but I understand what you're saying. Okay, so we'll hear from Petitioner. MR. McCOMBS: Yes, Your Honor. Judge Medley, first of all I'd just point
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2 3 4 5 6 7 8 9 10	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as a threshold to allowing us to file a motion to strike or in the alternative to reply in the first place. JUDGE MEDLEY: Okay, I understand. I think — so you've probably — before we heard from Petitioner, you probably both are familiar with both procedures sometimes when this issue — this type of thing comes up that the Board sometimes will allow the parties to file a listing	2 3 4 5 6 7 8 9 10	because the Petitioner's response to the allegation, if you will, is that, well, our you know, it was necessitated. We had to you know, we couldn't have anticipated a type of argument. So but I understand what you're saying. Okay, so we'll hear from Petitioner. MR. McCOMBS: Yes, Your Honor. Judge Medley, first of all I'd just point out that our position is that our petition replies are fully compliant with Rule 42.23(b) and that we understand that the arguments that we raise are
2 3 4 5 6 7 8 9 10 11 12	would be allowed to file a motion to strike or the surreply if the panel believed that's necessary as a threshold to allowing us to file a motion to strike or in the alternative to reply in the first place. JUDGE MEDLEY: Okay, I understand. I think — so you've probably — before we heard from Petitioner, you probably both are familiar with both procedures sometimes when this issue — this type of thing comes up that the Board sometimes will allow the parties to file a listing like you are proposing, Patent Owner?	2 3 4 5 6 7 8 9 10 11 12	because the Petitioner's response to the allegation, if you will, is that, well, our you know, it was necessitated. We had to you know, we couldn't have anticipated a type of argument. So but I understand what you're saying. Okay, so we'll hear from Petitioner. MR. McCOMBS: Yes, Your Honor. Judge Medley, first of all I'd just point out that our position is that our petition replies are fully compliant with Rule 42.23(b) and that we understand that the arguments that we raise are supposed to be responding to the arguments raised
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3 (Pages 6 to 9)



	Page 10		Page 12
1	to make clear on the record that this should not be	1	heard anything that would compel us to authorize a
2	a substitute for additional briefing and that a	2	motion to strike and/or a motion for surreplies.
3	list is a list.	3	So it might be that we just receive the
4	JUDGE MEDLEY: Right.	4	list and that we use that as kind of a placeholder
5	MR. McCOMBS: And if that is what the	5	so that when we decide the cases, we can reference
6	Board has in mind, we're fully capable of providing	6	those lists and then determine whether, you know,
7	a response to such a list.	7	on our own whether the arguments and the reply go
8	JUDGE MEDLEY: Okay. All right. Let me	8	beyond the scope of what should be in a reply.
9	put you on hold and the panel will confer.	9	So we'll allow both parties to file a
10	Do either of the parties have anything	10	list in serial succession. So, Patent Owner, you
11	else to add?	11	will file your list followed by Petitioner's list.
12	MR. McANDREWS: Your Honor, yes. This is	12	And we'll send out an order probably by tomorrow.
13	Peter McAndrews for Patent Owner.	13	Are there any questions?
14	One concern that we had with merely	14	MR. McANDREWS: Yes, Your Honor. For
15	providing a listing at this time is that there's	15	Patent Owner it sounds like based on the timing of
16	going to be some time delay here, and,	16	this that this will preclude Patent Owner from
17	unfortunately, we find ourselves in the situation	17	submitting a surreply. In the event that the Board
18	where we are less than six weeks to the trial date,	18	were to determine that this is not new argument at
19	to the oral hearing date, and we have to cover a	19	a later date, it would have eliminated our ability
20	number of things between now and then, including,	20	to then file a surreply.
21	you know, we're cross-examining witnesses and, you	21	JUDGE MEDLEY: Yeah, we're capable of
22	know, we have authorizations that will become due.	22	asking for briefing at any time. I mean, even if
23	And so if the turn-around on this listing	23	we get to oral argument and we determine that we
24	and then Your Honor's decision on whether we can	24	want more briefing we can ask for more briefing.
	Page 11		Page 13
1		1	
1 2	even file a motion to strike in the first instance	1 2	So I don't think that's a concern right now, I
1 2 3	even file a motion to strike in the first instance causes significant delay, this is going to be	1 2 3	So I don't think that's a concern right now, I think we just need a starting point to see what
2	even file a motion to strike in the first instance	2	So I don't think that's a concern right now, I think we just need a starting point to see what you're talking about and then we can go from there.
2	even file a motion to strike in the first instance causes significant delay, this is going to be difficult for us to pull off in the limited amount of time.	2	So I don't think that's a concern right now, I think we just need a starting point to see what
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4	is a complete, true, and correct transcript of the	
5	telephonic conference call proceedings taken in this	
6	case on June 21, 2017.	
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11	June 23, 2017	
12	Julie 23, 2017	
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14	Suzanno Duda (CSR-3199)	
15	Registered Professional Reporter	
16	Certified Realtime Reporter Notary Public, Clinton County, Michigan	
17	Acting in the County of Gratiot My commission expires: May 6, 2019	
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