

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 IPR2016-01021¹
Patent 8,718,158

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE**

¹ DISH Network, LLC, who filed a Petition in IPR2017-00255, 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 IPR2017-00417, have been joined in this proceeding.

I. Introduction

Patent Owner TQ Delta (“TQ Delta”) filed a motion to exclude numerous exhibits as irrelevant, being based on insufficient facts or data, and/or untimely filed. TQ Delta’s objections are without merit. Exhibits 1022, 1023, 1024, 1025, 1028, and portions of Exhibit 2013 are admissible under Fed. R. Evid. 402, Fed. R. Evid. 403, 37 C.F.R. § 42.23, and/or 37 C.F.R. § 42.61. Exhibit 1026 and portions of Exhibit 2013 are admissible under Fed. R. Evid. 702 and Fed. R. Evid. 705. Accordingly, TQ Delta lacks any legitimate grounds to exclude these exhibits.

II. Argument

A. Exhibit 1022

Exhibit 1022 is a chapter titled “Physical Layer” from a book titled *WiMedia UWB*. The author of Exhibit 1022 is TQ Delta’s expert declarant, Dr. Short.

1. Exhibit 1022 is admissible because TQ Delta failed to timely preserve the objection.

TQ Delta argues that Exhibit 1022 is irrelevant and untimely under Fed. R. Evid. 402, Fed. R. Evid. 403, 37 C.F.R. § 42.23, and/or 37 C.F.R. § 42.61. Patent Owner’s Motion to Exclude Evidence (“Mot.”), Paper 31, p. 2.

The Office Patent Trial Practice Guide (“Practice Guide”) states that a motion to exclude evidence must identify where in the record the objection was originally made. Practice Guide, 77 Fed. Reg. 48765, 48767 (Aug. 14, 2012); *see*

also Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co., CBM 2012-00002,

Paper 66, p. 60, (P.T.A.B. 2014). For evidence introduced during a deposition, “[a]n objection to the admissibility ... must be made during the deposition.” 37 C.F.R. § 42.64(a).

TQ Delta failed to timely object to Exhibit 1022. Exhibit 1022 is deposition evidence because it was first introduced during the deposition of Dr. Short. Ex. 1027, 81:12-16. TQ Delta, however, failed to object to Exhibit 1022 at that time. Ex. 1027, 81:17-82:24. Because TQ Delta failed to timely object to Exhibit 1022, TQ Delta failed to preserve this objection. Accordingly, TQ Delta cannot now use its motion to exclude to suppress Exhibit 1022.

2. Exhibit 1022 is Relevant

Even if TQ Delta had objected timely, TQ Delta still fails to show that Exhibit 1022 is inadmissible under the cited rules. Initially, TQ Delta argues that Exhibit 1022 is irrelevant under Fed. R. Evid. 402 and Fed. R. Evid. 403 because it is not cited in the Petitioner's Reply or Dr. Tellado's Second Declaration. Mot., p. 2. But the standard for relevance is not whether a piece of evidence is cited in a Petitioner's Reply or an expert's declaration. TQ Delta makes no attempt to address the proper standard for admissibility under Fed. R. Evid. 402. TQ Delta does not dispute that Exhibit 1022 meets the burden for relevant evidence under Fed. R. Evid. 401. And TQ Delta does not explain how it would be unfairly

prejudiced under Fed. R. Evid. 403 by admission of Exhibit 1022. Without analysis or explanation, TQ Delta fails to carry its burden as the movant. *See* 37 C.F.R. § 42.20(c).

TQ Delta also argues that Exhibit 1022 is irrelevant because it is not prior art. Mot., p. 3. But, again, TQ Delta fails to address the proper standard for relevance. *See* Fed. R. Evid. 401. Exhibit 1022 is relevant because Exhibit 1022 provides context and relevant information relating to Dr. Short's opinions as to what was known to a person of ordinary skill in the art at the time the '158 Patent was filed. Ex. 1027, 87:17-90:5.

Finally, TQ Delta provides no explanation or analysis regarding Exhibit 1022 vis-à-vis 37 C.F.R. § 42.23 and § 42.61. Thus, TQ Delta again fails to carry its burden as the movant. *See* 37 C.F.R. § 42.20(c).

Because TQ Delta fails to show that Exhibit 1022 is irrelevant or unfairly prejudicial, Exhibit 1022 is relevant and admissible under Fed. R. Evid. 402, Fed. R. Evid. 403, 37 C.F.R. § 42.23, and 37 C.F.R. § 42.61.

B. Exhibit 1025 is Relevant

Exhibit 1025 is a dissertation submitted to the Department of Electrical Engineering and the Committee on Graduate Studies of Stanford University by Petitioner's expert Dr. Jose Tellado.

TQ Delta alleges that Exhibit 1025 is irrelevant and untimely filed under

Fed. R. Evid. 402, Fed. R. Evid. 403, 37 C.F.R. § 42.23, and/or 37 C.F.R. § 42.61

because it has not been cited in the Petition or Petitioner's Reply. Mot., p. 4. TQ Delta argues in the alternative that Exhibit 1025 is not relevant because it is not prior art. Mot., p. 4. As already discussed above, such arguments do not address the proper standard for determining whether evidence is relevant. *See* Fed. R. Evid. 401 and Fed. R. Evid. 402. TQ Delta also provides no explanation for its contention that Exhibit 1025 would be unfairly prejudicial to TQ Delta under Fed. R. Evid. 403. Without addressing the proper standard or providing any explanation, TQ Delta fails to carry its burden as a moving party. *See* 37 C.F.R. § 42.20(c).

Exhibit 1025 is relevant to the proceeding because it shows that phase scrambling was known to reduce PAR before the '158 Patent was filed. *See* Petitioner's Reply, Paper 20, pp. 12-13; Ex. 2013, 8:2-8; 15:8-13; 17:5-8 ("My thesis has a long list of people that were doing research in phase scrambling. That was prior art for my thesis. It was well known when I wrote my thesis."). Whether phase scrambling was known to reduce PAR is an issue in this *inter partes* review. Exhibit 1025 includes a list of references cited by Dr. Tellado that demonstrate that phase scrambling was known to reduce PAR before the '158 Patent was filed. Ex. 1025, p. 152 (citing to Ex. 1023 as [77]) & p. 153 (citing to Ex. 1024 as [82]); *see also* Ex. 2013, 146:16-152:4 (testimony of Dr. Tellado explaining his citations in Ex. 1025 that refer to Ex. 1023 and 1024). Therefore, Exhibit 1025 is relevant and

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