

1 DR. THOMAS F. LA PORTA
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3 - - - - -
4 BEFORE THE PATENT TRIAL AND APPEAL BOARD

5 - - - - -
6 BRIGHT HOUSE NETWORKS, LLC
7 WIDOPENWEST FINANCE, LLC
8 KNOLOGY OF FLORIDA, INC.
9 BIRCH COMMUNICATIONS, INC.,

10 Petitioners

11 v.

12 FOCAL IP, LLC,

13 Patent Owner

14 - - - - -
15 Case IPR2016-01259
16 Patent Number: 8,155,298
17 Case IPR2016-01261
18 Patent Number: 8,457,113

19 Case IPR2016-01262
20 Patent Number: 7,764,777
21 Case IPR2016-01263
22 Patent Number: 8,155,298

23 - - - - -
24 VIDEOTAPED DEPOSITION OF DR. THOMAS F. LA PORTA
25 VOLUME II

February 24, 2017
State College, PA

JOB NO. 119418

1 DR. THOMAS F. LA PORTA
 2 VIDEOTAPED DEPOSITION OF DR. THOMAS F. LA PORTA
 3 a witness herein, called by Patent Owner for
 4 examination, by and before Michelle L. Hall, a
 5 Registered Merit Reporter and Notary Public in
 6 and for the Commonwealth of Pennsylvania, at
 7 the Ramada State College Hotel & Conference
 8 Center, 1450 South Atherton Street, State
 9 College, PA, on Friday, February 24, 2017, at
 10 8:51 a.m.

11 -----
 12 COUNSEL PRESENT:

13 For the Petitioners:

14 Christopher Tyson, Esquire
 15 Patrick McPherson, Esquire
 16 Duane Morris
 17 505 9th Street, N.W.
 18 Washington, DC 20004

19 Sarah Guske, Esquire
 20 Baker Botts
 21 101 California Street
 22 San Francisco, CA 94111
 23 Jaspal Hare, Esquire
 24 Spencer Fane
 25 10100 North Central Expressway
 Dallas, TX 75231
 (via teleconference)

And
 Gardiner Davis, Esquire
 Spencer Fane
 1000 Walnut Street
 Kansas city, MO 64106
 (via teleconference)

1 DR. THOMAS F. LA PORTA
 2 COUNSEL PRESENT (CONT.):

3 For the Patent Owner:

4 John Murphy, Esquire
 5 Nelson Bumgardner
 6 3131 West 7th Street
 Fort Worth, TX 76107

7 Hanna Madbak, Esquire
 8 Siber Law
 9 28 W. 44th Street
 New York, NY 10036

10 ALSO PRESENT:

11 Regis J. (Bud) Bates
 12 Victoria Ferrandino, Legal Video Specialist

1 DR. THOMAS F. LA PORTA
 2 I N D E X

3 -----
 4 WITNESS: DR. THOMAS F. LA PORTA

5 E X A M I N A T I O N : PAGE
 6
 7
 8 BY MR. MURPHY 319

9
 10 E X H I B I T S (First Referenced):

11 EXHIBIT 1002 Declaration of Thomas F. 320
 12 La Porta in Support of Petition for Inter
 13 Partes Review of U.S. Patent No. 7,764,777

14 EXHIBIT 1002 Declaration of Thomas F. 320
 15 La Porta in Support of Petition for Inter
 Partes Review of U.S. Patent No. 1,155,298

16 EXHIBIT 1032 (Excerpt) Newton's Telecom 335
 17 Dictionary, Pages 1, 2, and 13

18 EXHIBIT 1033 (Excerpt) Random House 359
 19 Webster's Computer & Internet Dictionary
 20 Pages 1, 2, and 11

1 DR. THOMAS F. LA PORTA
 2 P R O C E E D I N G S

3 -----
 4 THE VIDEOGRAPHER: This is the
 5 continuation of the video deposition of
 6 Dr. Thomas La Porta in the matter of Bright
 7 House Networks, LLC, et al., versus FOCAL IP,
 8 LLC, in the United States Patent and Trademark
 9 Office before the Patent Trial and Appeal
 10 Board, Case Nos. IPR2016-01259, Case No.
 11 IPR2016-01261, IPR2016-01262, and
 12 IPR2016-01263.

13 This deposition is being held at
 14 1450 South Atherton Street, State College,
 15 Pennsylvania, on February 24, 2017, at 8:51 a.m.

16 My name is Victoria Ferrandino from
 17 TSG Reporting, and I'm a Legal Video
 18 Specialist. The court reporter today is
 19 Michelle Hall in association with TSG
 20 Reporting.

21 Would counsel please introduce
 22 yourselves.

23 MR. MURPHY: This is John
 24 Murphy on behalf of the Patent Owner. Do we
 25 need to introduce ourselves again? This is a

1 DR. THOMAS F. LA PORTA
 2 continuation.
 3 THE VIDEOGRAPHER: Will the
 4 people on the phone introduce themselves.
 5 MR. TYSON: Could the people
 6 on the phone introduce themselves.
 7 MR. DAVIS: Gardiner Davis,
 8 Spencer Fane, Kansas City, representing Birch
 9 Communications.
 10 MR. HARE: Jaspal Hare from
 11 Spencer Fane, Dallas, also representing Birch
 12 Communications.
 13 THE VIDEOGRAPHER: Will the
 14 court reporter please swear in the witness.
 15 THE COURT REPORTER: Will you
 16 raise your right hand, please.
 17 - - - - -
 18 DR. THOMAS F. LA PORTA
 19 a witness herein, having been first duly sworn,
 20 was examined and testified further as follows:
 21 - - - - -
 22 EXAMINATION
 23 BY MR. MURPHY:
 24 Q. Good morning.
 25 A. Good morning.

1 DR. THOMAS F. LA PORTA
 2 Q. Day two. So, just for the record,
 3 we introduced some new exhibits. Make sure I
 4 get this right. You have now Archer, which is
 5 U.S. Patent No. 6,683,870, that's Exhibit 1003
 6 in the 1216, Exhibit 1103 in the 1259, and
 7 Exhibit 1003 in the 1262, and Exhibit 1003 in
 8 the 1263; is that right?
 9 A. Yes, I have the patent.
 10 Q. And then you also received your
 11 expert declaration for the '298 patent, which
 12 was filed in the 1263 case as Exhibit 1002; is
 13 that correct?
 14 A. That's correct.
 15 Q. And then you also have -- and then
 16 with -- that document is the same as
 17 Exhibit 1102 in the 1259 case; is that correct?
 18 A. That's correct.
 19 Q. And also in front of you is
 20 Exhibit No. 1002 in the 1262 case, which is
 21 your expert report to the '777 patent; is that
 22 correct?
 23 A. That's correct.
 24 Q. You don't -- in any of your expert
 25 reports, you don't allege that any of the

1 DR. THOMAS F. LA PORTA
 2 challenged claims of any of the challenged
 3 patents are anticipated, do you?
 4 A. I don't use the term anticipated,
 5 no. Not explicitly.
 6 Q. So, sitting here today, you cannot
 7 allege that all the claims are explicitly
 8 disclosed --
 9 MR. TYSON: Object to the
 10 form.
 11 Q. -- in any of the challenged claims?
 12 A. I would have to go through my
 13 report. There may be claims that I say are
 14 explicitly taught in Archer, every element.
 15 But I -- I don't remember. But -- but, again,
 16 in my opinion, Archer -- the grounds I have is
 17 Archer either teaches or renders obvious every
 18 element of every claim. Let me just check my
 19 reports here.
 20 Yeah. So it's my opinion in the
 21 '777 that all the challenged claims are obvious
 22 over Archer. So, again, some of these are I
 23 would say Archer teaches explicitly, some I say
 24 are inherent, some I say are obvious. I think
 25 I answered that already for the '113 yesterday.

1 DR. THOMAS F. LA PORTA
 2 And I'll check the '298.
 3 Again, for the '298, I say the
 4 claims are obvious over Archer and Chang at
 5 least, and then obvious over Archer, Chang, and
 6 Swartz together. So, again, every element I
 7 claim is either taught explicitly by Archer
 8 would be obvious or is inherent.
 9 Q. Right. But can you identify any
 10 claims that you actually are alleging
 11 anticipation on?
 12 A. I don't give an opinion on
 13 anticipation, so, no.
 14 Q. For all of your expert reports you
 15 have a statement in your declarations where you
 16 say, the prior art grounds discussed below
 17 match what a POSA would understand the plain
 18 and ordinary meaning to be of the petition
 19 claims.
 20 A. Can you give me an example of a
 21 page?
 22 Q. Oh. Looking at the '777 dec.
 23 A. Okay.
 24 Q. Paragraph 96.
 25 A. Yes.

1 DR. THOMAS F. LA PORTA
 2 Q. So, this -- this same statement is
 3 consistent throughout all your reports; right?
 4 A. I believe it is, and I can check,
 5 but --
 6 Q. Yeah, if you could clarify that just
 7 for the record so we know.
 8 A. Sure.
 9 Q. As you're looking for it, I mean,
 10 the way I understand that is if you ever
 11 introduce a particular claim construction for a
 12 particular claim element, you'll note it as
 13 such in your report; correct?
 14 A. Yes. So, I think that's also what I
 15 said yesterday. I used the plain and
 16 ordinary -- ordinary meaning of what a POSA
 17 would understand it, and in cases where I felt
 18 that required some explanation, I provided it.
 19 Q. Okay.
 20 A. I just want to check the -- hold on.
 21 I think that's in all three reports. It's
 22 definitely in the '298, it's in the '777, and
 23 it's in the '113, yes.
 24 MR. TYSON: Just for the
 25 record, can you clarify what, when you're

1 DR. THOMAS F. LA PORTA
 2 answering, would have been in the '113.
 3 A. Okay. So the same statement, same
 4 analogous statement is in all three, which
 5 says, in my opinion, the prior art grounds
 6 discussed below match what a POSA would
 7 understand the plain and ordinary meaning of
 8 the petition claim terms to be when read in
 9 light of the '298 patent's claims, the
 10 specification, and the file history. Where
 11 relevant, I provide a discussion of what a POSA
 12 would understand the plain and ordinary meaning
 13 of certain claims to be.
 14 So, that's in every report on each
 15 of the three patents.
 16 Q. I want to turn to your '113
 17 declaration, Paragraph 151, Page 100.
 18 A. Excuse me. What page and paragraph?
 19 Q. Paragraph 151 in the '113 dec.
 20 A. And we're talking about the '113
 21 patent; right?
 22 Q. The '113 declaration.
 23 A. Right. But I mean, obviously,
 24 that's related to the '113 patent. Okay.
 25 Q. Here you have an opinion where you

1 DR. THOMAS F. LA PORTA
 2 state that Archer teaches after a call
 3 initiates a call -- after a caller initiates a
 4 call --
 5 A. Excuse me for asking again, what
 6 paragraph again? 153 you said?
 7 Q. 151.
 8 A. 151. I'm on the wrong page. Okay.
 9 I -- I just want to read the context of what
 10 this says before I --
 11 Q. All right.
 12 A. And you can ask the question but --
 13 Q. Go ahead and read it first if you
 14 need to understand it.
 15 A. Okay. I've read that. And then
 16 Paragraph 151 you said; right?
 17 Q. Right.
 18 A. So -- okay.
 19 Q. So, in Archer, you discussed that
 20 the call signals are transmitted as analog or
 21 digital signals over a circuit-switched
 22 communication network; right?
 23 A. That's correct.
 24 Q. So, within the transport of the
 25 circuit-switched network, you say it could be

1 DR. THOMAS F. LA PORTA
 2 analog or digital. You say Archer teaches
 3 that; right?
 4 MR. TYSON: Object to the
 5 form, scope.
 6 A. That's correct.
 7 Q. And then you say, that network is
 8 coupled to converter 126 which converts the
 9 analog signals into a digital protocol.
 10 A. That's correct.
 11 Q. Is that right?
 12 A. That's correct.
 13 Q. So, when the converter is receiving
 14 analog signals from the circuit-switched
 15 network, that's indicative that that's
 16 connected to an edge switch; correct?
 17 MR. TYSON: Object to the
 18 form, scope.
 19 A. Not necessarily. I mean, there
 20 could be analogs in -- inside a network at the
 21 time of the invention. So it would be rare,
 22 but it's -- it's possible. And I believe
 23 Archer -- where did I put Archer? I don't know
 24 if I cite to it here, but Archer does say that,
 25 you know, networks are largely digital, which

1 DR. THOMAS F. LA PORTA
2 they were. But -- but there could be analog
3 lines in them.

4 Q. Right. So we just went over that
5 word. The actual communication network could
6 be analog or digital?

7 A. Right.

8 Q. But once it connects to the
9 converter, it's connecting to it as an analog
10 signal?

11 MR. TYSON: Object to the
12 form.

13 Q. That's how you say Archer teaches
14 it; right?

15 A. I say it teaches it as it couples
16 either with analog signals or digital signals.

17 Q. You say it's coupled to a converter
18 which converts the analog signals into a
19 digital protocol. So you're explicit that
20 analog signals are coming out of the
21 communication network 118 to converter?

22 A. No. You're reading it out of
23 context. The first sentence before that says,
24 the call signals are transmitted as analog or
25 digital signals over circuit-switched

1 DR. THOMAS F. LA PORTA
2 communication network.

3 Q. Uh-huh.

4 A. And then those signals that are
5 analog are converted into the digital protocol.
6 Obviously, the signals that are digital don't
7 have to be converted into a digital protocol;
8 they're already digital. So I was covering two
9 cases in one sentence.

10 Q. So if you have an analog signal
11 coming out of the telecommunications network,
12 yesterday we covered the ground that that would
13 never connect to a tandem switch; correct?

14 MR. TYSON: Object to the
15 form.

16 A. I don't remember covering that. I
17 don't think I ever said that if something was
18 analog, it had to be -- it could not be
19 connected to a tandem switch.

20 Q. Tandem switches communicate in
21 digital protocols as of the date of the
22 invention. A POSA would understand that;
23 right?

24 MR. TYSON: Object to the form
25 and scope.

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2 A. I think what I said yesterday was in
3 a large, large percentage of cases, that would
4 be true. But I said there could have been very
5 small shops, you know, small countries, that
6 still used old equipment that had analog
7 interconnect between networks.

8 It would have been very rare, but at
9 the time of Archer, there could have still been
10 some out there. But the fact remains, it could
11 be analog or digital; so it could be both.

12 Q. Right. But then you say Archer only
13 teaches that the converter is only going to
14 convert the analog signals into a digital
15 protocol?

16 MR. TYSON: Object to the
17 form. Asked and answered and characterizing
18 the witness testimony.

19 A. Yeah. So, it wouldn't convert
20 digital signals to digital protocol because it
21 doesn't have to. So it receives both types,
22 and those signals that are analog, it has to
23 convert to digital. Those signals that are
24 digital, it does not have to convert. But it
25 still processes them in the same way, besides

1 DR. THOMAS F. LA PORTA
2 the fact it does not have to convert them.

3 See, the next sentence says, the
4 digital data is then routed to the packet-
5 switched network to the server processor. So
6 if I -- if I can parse this for you, the way
7 you could read it is the call signals are
8 transmitted as digital signals over the
9 circuit-switched communication network, which
10 is coupled to a converter. The digital data is
11 then routed to the packet-switched network.

12 And then I could have written a
13 separate sentence that said, the call signals
14 are trans -- also transmitted as -- or can also
15 be transmitted as analog signals over the
16 circuit-switched communication network.

17 Q. Yeah. But you don't, don't you,
18 because you said Archer teaches this?

19 A. I wrote it in a different style.
20 That's the intent of what I wrote, that there
21 are two possible signals coming into the
22 converter, digital and analog. The analog is
23 converted to digital, and then everything's
24 digital. And anything that's digital is then
25 routed to the server processor. So that was

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