

Case IPR2016-01254
Patent No. 8,457,113

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.
Petitioner

v.

FOCAL IP, LLC
Patent Owner

Case No. IPR2016-01254
Patent: 8,457,113

PETITIONER'S MOTION TO EXCLUDE

Pursuant to 37 C.F.R. § 42.64(c), Petitioner Cisco Systems, Inc. hereby moves to exclude: (1) Exhibits 2023, 2025, 2028-2030 and 2065.

Petitioner has complied with the requirements of 37 C.F.R. § 42.64(c). Specifically, Petitioner timely objected to each of these exhibits and, for each exhibit, identified and explained the particular evidentiary grounds for their objections. Paper 26.

I. EXHIBITS 2023, 2025, 2028-2030 AND 2065 SHOULD BE EXCLUDED

Petitioners move to exclude Exhibits 2023, 2025, 2028-2030 and 2065, and any reference to or reliance thereon by Patent Owner, because these exhibits are incomplete transcripts and submissions of witnesses who have not submitted declarations or any direct testimony in the present case, and entities who are not petitioners in the present case, and as Patent Owner's reference to or reliance thereon is taken out of context. Thus, these exhibits confuse the issues in this IPR, waste time, and are prejudicial to Petitioners.

Exhibit 2023 is a copy of excerpts of Bright House Networks, LLC, petition for *inter partes* review from *inter partes* review proceeding IPR2016- 01261. Exhibits 2028-2030, and 2065, are respective copies of excerpts of the trial transcript of the cross-examination of Dr. Tal Lavian, and excerpts of a declaration of Dr. Lavian, from *inter partes* review proceedings IPR2016-01256, IPR2016-01258, and IPR2016-01260. Exhibit 2025 is a copy of excerpts of YMax

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Corporation's petition for *inter partes* review from *inter partes* review proceeding IPR2016-01260. Dr. Lavian is not a witnesses in the present proceeding and has not submitted declarations or any direct testimony in the present case. Additionally, YMax Corporation is not a petitioner in the present case.

These exhibits should be excluded under F.R.E. 106, 403, and 1006, because they include only Patent Owner's cherry-picked excerpts of the entire transcripts and submissions of such witnesses and entities, and because Patent Owner relies upon these excerpts out of the context of the rest of the testimony and documents. For example, none of these excerpts involved testimony regarding interconnecting two different types of networks (such as an IP network and a circuit switched network) like the prior art of record in this proceeding.

Thus, Exhibits 2023, 2025, 2028-2030, and 2065 should be excluded.

Dated: August 21, 2017

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Respectfully submitted,
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.53, the undersigned certifies that on August 21, 2017, a complete and entire electronic copy of **Petitioner's Motion to Exclude** was served electronically via email on the following:

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