

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Bright House Networks, LLC,
WideOpenWest Finance, LLC,
Knology of Florida, Inc.
Birch Communications, Inc.
Petitioners

v.

Focal IP, LLC,
Patent Owner

Case No. IPR2016-01259
U.S. Patent No. 8,155,298

**PETITIONERS' REPLY IN SUPPORT OF THEIR MOTION TO
EXCLUDE**

I. PATENT OWNER HAS NOT OVERCOME THE ARGUMENTS IN THE MOTION TO EXCLUDE FOR EXHIBITS 2011, 2021, 2024, 2025, AND 2027-2030

A. Exhibit 2011 Remains Inadmissible

For the reasons set forth in Petitioners' Motion to Exclude (Paper 48), Exhibit 2011 remains irrelevant under F.R.E. 402 and any attempted reliance on this exhibit by the Patent Owner for the first time during the oral hearing remains improper under F.R.E. 403 and the Board's rules. Patent Owner acknowledges that it does not cite to Exhibit 2011 in *any* paper in this proceeding. Paper 49, Opposition to Motion to Exclude ("Opposition"), at 1.

Thus, the Board should exclude this exhibit and reject any attempt by Patent Owner to make any argument relying on this document at the oral hearing, like the one it improperly attempts to inject for the first time in its Opposition. *Id.*; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012) ("A party may . . . only present arguments relied upon in the papers previously submitted. No new evidence or arguments may be presented at the oral argument.")

B. Exhibits 2021, 2024, 2025, and 2027-2030 Remain Inadmissible

Patent Owner acknowledges that Exhibits 2021, 2024, 2025, and 2027-2030 are *incomplete* transcripts and submissions of witnesses who have not submitted declarations or any direct testimony in the present case, and of entities who are not petitioners in the present case. Opposition at 2-3. Patent Owner's argument that *Petitioners*, instead of itself, needed to submit the complete transcripts and

submissions for each of these exhibits with their Reply is yet another improper attempt to shift Patent Owner's burden of complying with the F.R.E. onto Petitioners.

Rather, Petitioners followed the procedures set forth in F.R.E. 106 and 37 C.F.R. 42.64 by timely objecting to these exhibits as incomplete and preserving those objections in its Motion to Exclude. Patent Owner refused to respond to these objections with supplemental evidence including the complete documents and thus failed to cure its lack of compliance with the F.R.E. Petitioners' filing of Exhibit 1161 did not retroactively relieve Patent Owner of its obligation to comply with the Federal Rules, or with those of this Board, for all of these exhibits.

Thus, Exhibits 2021, 2024, 2025, and 2027-2030 remain inadmissible in this IPR.

II. CONCLUSION

For at least the above reasons and the reasons set forth in Petitioners' Motion to Exclude (Paper 48), the Board should exclude Exhibits 2011, 2021, 2024, 2025, and 2027-2030.

Dated: September 5, 2017

BAKER BOTTS LLP
ATTN: Wayne Stacy
101 California Street, Suite 3600
San Francisco, CA 94111

Respectfully submitted,
BAKER BOTTS LLP
By: /s/ Wayne Stacy
Wayne Stacy
Reg. No. 45,125
Lead Counsel

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.53, the undersigned certifies that on September 5, 2017, a complete and entire electronic copy of **Petitioners' Reply to Their Motion to Exclude** was served electronically via email on the following:

Brent N. Bumgardner
brent@nelbum.com
PAL-IPR@nelbum.com

John Murphy
murphy@nelbum.com

NELSON BUMGARDNER, P.C.
3131 W. 7th Street, Suite 300
Fort Worth, Texas 76107

Victor Siber
vsiber@siberlaw.com

Hanna Madbak
hmadbak@siberlaw.com

By: /s/ Christopher J. Tyson
Christopher J. Tyson
Reg. No. 63,850
Back-up Counsel