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 IPR2016-01261
Patent Number: 8,457,113

PATENT OWNER'S REQUEST FOR REHEARING UNDER 37 C.F.R. § 42.71(d)

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71 (c)-(d), Patent Owner FOCAL IP, LLC requests a rehearing of the Board's Decision granting institution of *inter partes* review entered January 3, 2017 (Paper No. 19) ("Decision") regarding Claims 1, 2, 8, 11, 15–19, 94, 95, 102, 109–13, 128, 163, 164, 166–68, 175, and 179–81 of the '113 Patent (collectively, the "Challenged Claims") 1) based on the combination of Archer and Chang, and 2) the construction of "tandem switch." The Decision was based upon an erroneous reading of the relevant functionality of these two references and the construction of "tandem switch."

II. RELIEF REQUESTED

The Board misapprehended or overlooked Patent Owner's argument as to 1) why Archer cannot be combined with Chang to render obvious the Challenged Claims and, 2) the construction of "tandem switch." Accordingly, pursuant to 37 C.F.R. § 42.71 (c)-(d), Patent Owner requests that the Board reconsider its Decision of the Challenged Claims and deny instituting *inter partes* review of the Challenged Claims of the '113 Patent in light of 1) the ground involving Archer and Chang, and the proper construction of "tandem switch."

III. LEGAL STANDARD

A request for rehearing is appropriate when the requesting party believes "the Board misapprehended or overlooked" a matter that was previously addressed in the record. *See* 37 C.F.R. § 42.71(d). The request "must specifically identify all matters

the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." *Id*. In reviewing such a request, the "panel will review the decision for an abuse of discretion." 37 C.F.R. § 42.71 (c). An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, or on erroneous facts. *See Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P'ship v. Duda*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 13-15-16 (Fed. Cir. 2000). Abuse also occurs "if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors." *TD Ameritrade v. Trading Techs. Int'l, Inc.*, CBM2014-00137, Paper No. 34 at 3 (Feb. 2, 2015).

IV. BECAUSE THE BOARD MISAPPREHENDED OR OVERLOOKED PATENT OWNER'S ARGUMENTS AS TO WHY ARCHER CANNOT BE PROPERLY COMBINED WITH CHANG, THE DECISION WAS CLEARLY ERRONEOUS

In its Patent Owner Preliminary Response (POPR, Paper No. 11), Patent Owner argued that Archer's alleged call processing system (including converters 126, 132, packet-switched network 130, server processor 128, and database 138 in Archer, see Petition at 33) could not be combined with Chang's Secure Access Platform 25/525. *See id*. at 36. Patent Owner's position is that Chang's Secure Access Platform 25/525 is nothing more than a web server that functions to receive user inputs and pass them along to SCPs 19 (databases of subscriber information). POPR at 59. Patent Owner quoted the portion of Chang which stated that Secure

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