

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRIGHT HOUSE NETWORKS, LLC
WIDEPENWEST FINANCE, LLC
KNOLOGY OF FLORIDA, INC.
BIRCH COMMUNICATIONS, INC.

Petitioner

v.

FOCAL IP, LLC,

Patent Owner

Case IPR2016-01261
Patent Number: 8,457,113 B2

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

TABLE OF CONTENTS

I. LEGAL STANDARD 1

II. THERE IS NO RATIONALE PROVIDED BY PETITIONERS OR THE BOARD THAT WARRANT ADDITIONAL BRIEFING BY PETITIONERS 2

III. THERE IS NO INTERVENING CHANGE OF LAW REGARDING PETITIONERS THAT WARRANT ADDITIONAL BRIEFING 4

IV. THE BOARD MISAPPREHENDED OR OVERLOOKED THE ISSUES THAT PETITIONERS SHOULD HAVE ADDRESSED IN THE ORIGINAL BRIEFING BASED ON THE PRECEDENTIAL HOLDING IN MASTERIMAGE..... 7

V. THE BOARD MISAPPREHENDED OR OVERLOOKED THE FACTS AND RULINGS IN THE RECORD REGARDING THE EXPUNGEMENT OF CLAIM CHARTS OF BHN AND YMAX AND THEIR REPRESENTATIONS THAT THEY ALREADY BRIEFED THE ORIGINAL CLAIM LIMITATIONS TO THE PRIOR ART IN THEIR OPPOSITIONS TO THE MOTIONS TO AMEND 9

VI. CONCLUSION11

TABLE OF AUTHORITIES

Cases:

<i>Aqua Prods., Inc. v. Matal</i> , No. 2015-1177 (Fed. Cir. Oct. 4, 2017).....	<i>passim</i>
<i>MasterImage 3D, Inc. v. RealD Inc.</i> , Case No. IPR2015-00040, Paper No. 42 (P.T.A.B. July 15, 2015).....	7-9, 11
<i>Star Fruits S.N.C. v. United States</i> , 393 F.3d 1277 (Fed. Cir. 2005)	1
<i>TD Ameritrade v. Trading Techs. Int’l, Inc.</i> , Case No. CBM2014-00137, Paper No. 34 (P.T.A.B. Feb. 2, 2015).....	2

Rules, Statutes and Regulations:

37 C.F.R. § 42.71 (c)	1
37 C.F.R. § 42.71(d)	1
35 U.S.C. § 316(d).....	5

UPDATED LIST OF EXHIBITS

2001	Declaration of Regis J. “Bud” Bates filed with Preliminary Response
2002	Ray Horak, Communications Systems & Networks, (2 nd ed. 2000)
2003	Ray Horak, Webster’s New World Telecom Dictionary (2008)
2004	Ray Horak, Telecommunications and Data Communications (2007)
2005	Prosecution History of U.S. Patent No. 7,764,777 (“777ProsHist”)
2006	Harry Newton, Newton’s Telecom Dictionary, (23 rd ed. 2007)
2007	Declaration of John P. Murphy in Support of Unopposed Motion for <i>Pro Hac Vice</i> Admission
2008	Declaration of Hanna F. Madbak in Support of Unopposed Motion for <i>Pro Hac Vice</i> Admission
2009	Corrected Declaration of Hanna F. Madbak in Support of Unopposed Motion for <i>Pro Hac Vice</i> Admission
2010	U.S. Patent No. 6,574,328
2011	Opening Claim Construction Expert Declaration of Dr. Eric Burger filed by certain Defendants in the underlying district court litigation Case No. 3:15-cv-00742-TJC-MCR, Dkt No. 89-2, filed 08/12/16.
2019	Deposition Transcript of Dr. La Porta, Feb. 24, 2017, for IPR2016-01259, -01261, -01262, and 01263
2020	Deposition Transcript of Dr. La Porta, Feb. 23, 2017, for IPR2016-01259, -01261, -01262, and 01263 (“La Porta Dep.”)
2021	Deposition Transcript of Mr. Willis, Mar. 1, 2017, for IPR2016-01254 and -01257. (“Willis Dep.”)
2022	Declaration of Regis J. “Bud” Bates in Support of Response (“BatesDec”)
2023	Petition filed in IPR2016-01261 (“-01261 Pet.”)
2024	Petition filed in IPR2016-01254 (“-01254 Pet.”)
2025	Petition filed in IPR2016-01260 (“-01260 Pet.”)
2026	Declaration of Dr. La Porta in support of the Petition, Ex. 1002 of IPR2016-01262 (“La Porta Dec. of IPR2016-01262”)

2027	Declaration of Mr. Willis in support of the Petition, Ex. 1002 of IPR2016-01254 (“Willis Dec. of IPR2016-01254”)
2028	Declaration of Dr. Lavian in support of the Petition, Ex. 1002 of IPR2016-01258 (“Lavian Dec. of IPR2016-01258”)
2029	Deposition Transcript of Dr. Lavian, March 29, 2017, for IPR2016-01256, -01258, and -01260 (“Lavian Dep.”)
2030	Declaration of Dr. Lavian in support of the Petition, Ex. 1002 of IPR2016-01256 (“Lavian Dec. of IPR2016-01256”)
2040	Declaration of Regis J. “Bud” Bates in Support of Motion to Amend (“BatesDec”)
2041	Listing of Section 112 Written Description Support for the Proposed Substitute Claims
2042	Application No. 11/948,965, filed on November 20, 2007 (annotated with line numbers)
2043	Application No. 10/426,279, filed on April 30, 2003 (annotated with line numbers)
2044	Application No. 09/565,565, filed on May 4, 2000 (annotated with line numbers)
2045	U.S. Pat. No. 4,646,296 (filed on July 9, 1984)
2046	U.S. Patent No. 6,381,323 to Schwab, et al. (“Schwab”)
2047	U.S. Patent No. 6,463,145 to O’Neal et al. (“O’Neal”)
2048	U.S. Patent No. 6,683,870 to Archer (“Archer”)
2049	U.S. Patent No. 5,958,016 to Chang et al. (“Chang”)
2050	U.S. Patent No. 6,353,660 to Burger et al. (“Burger”)
2051	U.S. Patent No. 6,798,767 to Alexander et al. (“Alexander”)
2052	PCT Application No. WO 99/14924 to Shtivelman (“Shtivelman”)
2053	U.S. Patent No. 5,809,128 to McMullin (“McMullin”)
2054	U.S. Patent No. 6,445,694 to Swartz (“Swartz”)
2055	An Overview of Signaling System No. 7, Abdi R. Modarressi, and Ronald A. Skoog, April, 1992
2056	U.S. Patent No. 4,646,296 to Bartholet et al. (“Bartholet”)
2057	\$200 Billion Broadband Scandal, Bruce Kushnick, 2006
2058	U.S. Patent No. 6,744,759 to Sidhu et al. (“Sidhu”)
2059	U.S. Patent No. 6,041,325 to Shah et al. (“Shah”)
2060	U.S. Patent No. 5,802,160 to Kugell et al. (“Kugell”)

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.