

Reply to Patent Owner's Preliminary Response Pursuant to 37 C.F.R. § 42.108(c)
IPR 2016-01261
U.S. Patent No. 8,457,113

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
U.S. Patent No. 8,457,113

**DECLARATION OF THOMAS F. LA PORTA IN SUPPORT OF
PETITIONERS' REPLY TO PATENT OWNER'S PRELIMINARY
RESPONSE PURSUANT TO 37 C.F.R. § 42.108(c)**

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1. I, Thomas F. La Porta, declare as follows:

2. I have personal knowledge of the facts stated in this declaration, and could and would testify to these facts under oath if called upon to do so.

I. INTRODUCTION AND QUALIFICATIONS

A. Engagement Overview

3. I have been retained by counsel for Bright House Networks, LLC, WideOpenWest Finance, LLC, Knology of Florida, Inc., and Birch Communications, Inc. (Petitioners) in this case as an expert in the relevant art. I previously provided a declaration in this case in support of the Petition setting forth my opinions regarding the state of the art and invalidity of the challenged claims. I am being compensated for my work at the rate of \$550 per hour. No part of my compensation is contingent upon the outcome of this petition.

4. I was asked to study the Patent Owner's October 12, 2016 Preliminary Response to Petitioners' Petition for *Inter Partes* Review of U.S. Patent No. 8,457,113 ("the '113 patent"), and its exhibits including the Declaration of Regis J. "Bud" Bates, and to render opinions based on the testimony of Mr. Bates contained in this Declaration.

5. After studying the Preliminary Response, its exhibits including the Declaration of Mr. Bates, the '113 patent, its file history, and the prior art, and considering the subject matter of the claims of the '113 patent in light of the state

of technical advancement in the area of telephony in circuit-switched and packet-switched networks in the mid-1990s to 2000 time frame, I reached the conclusions discussed herein.

6. This declaration, and the conclusions and opinions herein, provide support for the Reply to Patent Owner’s Preliminary Response Pursuant to 37 C.F.R. § 42.108(c) filed by Petitioners in this case. I have reviewed the Reply in its entirety as well as its corresponding exhibits.

B. Materials Considered

7. My analysis is based on my education and experience as set out in my June 24, 2016 Declaration in this case and in my curriculum vitae, including the documents I have read and authored and systems I have developed and used since then.

8. In addition to the materials set forth in my June 24, 2016 Declaration in this case, I have reviewed the following:

Exhibit No.	Description of Document
	Patent Owner’s Preliminary Response
2001	Declaration of Regis J. “Bud” Bates
2002	Ray Horak, Communications Systems and 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
2006	Harry Newton, Newton’s Telecom Dictionary (23 rd ed. 2007)

Exhibit No.	Description of Document
1055	U.S. Patent No. 6,574,328
1056	U.S. Patent No. 7,324,635

II. LEGAL PRINCIPLES USED IN THE ANALYSIS

9. In addition to the legal principles set forth in my June 24, 2016 Declaration in this case, attorneys for the Petitioners explained additional legal principles to me that I have relied upon in forming my opinions set forth in this report.

A. Legal Standards for Disclaimer of Claim Scope

10. As set forth in my June 24, 2016 Declaration in this case, I understand that, in *Inter Partes* Review, the claim terms are to be given their broadest reasonable interpretation (BRI) in light of the specification. *See* 37 C.F.R. § 42.100(b).

11. I have been informed and understand that the plain meaning of a claim term can be disclaimed or disavowed by the prosecution history or the specification of the patent. Counsel has advised me that a disclaimer must be “clear and unmistakable” to a person of ordinary skill in the art (“POSA”) in order to take effect. I understand that such disavowal must be, among other things, so unmistakable as to be unambiguous evidence of disclaimer.

12. I understand that such disavowal does not arise merely by criticizing a

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