

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. IPR2016-01262
U.S. Patent No. 7,764,777

**PETITIONERS' FIRST SET OF OBJECTIONS TO PATENT OWNER'S
EVIDENCE PURSUANT TO 37 C.F.R. 42.6**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioners Bright House Networks, LLC, WideOpenWest Finance, LLC, Knology of Florida, Inc., and Birch Communications, Inc. (collectively “Petitioners”) hereby submit the following objections to Patent Owner Focal IP, LLC’s (“Patent Owner”) Exhibits 2011, 2021, 2023-2025, 2027-2030, 2041, 2064, and 2065, and any reference to/reliance on the foregoing, in Patent Owner’s Response in the above-captioned *inter partes* review (“Response”) and Patent Owner’s Motion to Amend in the above-captioned *inter partes* review (“Motion to Amend”). As required by 37 C.F.R. § 42.62, Petitioners’ objections below apply the Federal Rules of Evidence (“F.R.E.”).

Petitioners’ objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed and served within five (5) business days of the filing of Patent Owner’s Response on April 3, 2017. Petitioners’ objections provide notice to Patent Owner that Petitioners may move to exclude these exhibits under 37 C.F.R. § 42.64(c).

I. OBJECTIONS TO EXHIBITS 2021, 2024, 2025, 2027-2030, AND 2065, AND ANY REFERENCE TO/RELIANCE THEREON

Evidence objected to: Exhibits 2021, 2024, 2025, 2027-2030, and 2065, and any reference to or reliance thereon. Exhibits 2021 and 2027 are respective copies of excerpts of the trial transcript of the cross-examination of Mr. Dean Willis, and excerpts of a declaration of Mr. Dean Willis, from *inter partes* review proceedings IPR2016-01254 and IPR2016-01257. Exhibit 2024 is a copy of excerpts of Cisco

Systems, Inc.'s petition for *inter partes* review from *inter partes* review proceeding IPR2016-01254.

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. Tal Lavian, from *inter partes* review proceedings IPR2016-01256, IPR2016-01258, and IPR2016-01260. Exhibit 2025 is a copy of excerpts of YMax Corporation's petition for *inter partes* review from *inter partes* review proceeding IPR2016-01260.

Neither Mr. Willis nor Dr. Lavian are witnesses in the present proceeding and have not submitted declarations or any direct testimony in the present case. Additionally, neither Cisco Systems, Inc. nor YMax Corporation are petitioners in the present case.

Grounds for objection:

In addition to the objections already made of record during the cross examination as reflected in the transcripts per 37 C.F.R. § 42.64(a) for Exhibits 2021 and 2029, Petitioners object to Exhibits 2021, 2024, 2025, 2027-2030, 2064, and 2065 and Patent Owner's reference to or reliance thereon, under F.R.E. 106 (incomplete), 402 (relevance), 403 (confusing, waste of time, unfair prejudice), and/or 1006 (improper summary), as testimony of persons that are not witnesses nor declarants in the present case, as submissions by entities that are not petitioners

in the present case, as incomplete transcripts and submissions of such witnesses and entities, and as Patent Owner's reference to or reliance thereon is taken out of context.

Petitioners also object to Exhibits 2021 and 2029 under Rule 106 (incomplete) and Rule 403 (misleading, confusing, unfair prejudice) to the extent they respectively lack Mr. Willis' and Dr. Lavian's errata sheet.

II. OBJECTIONS TO EXHIBIT 2011 AND ANY REFERENCE TO/RELIANCE THEREON

Evidence objected to: Exhibit 2011 and any reference to or reliance thereon.

Exhibit 2011 is an opening claim construction expert declaration of Dr. Eric Burger filed by Bright House Networks, LLC, WideOpenWest Finance, LLC, Knology of Florida, Inc., Birch Communications, Inc., and T3 Communications, Inc., in district court litigation Case Nos. 3:15- cv-742-J-32MCR, 3:15-cv-743-J-32MCR, 3:15-cv-746-J-32MCR, 3:15-cv-747-J-32MCR.

Grounds for objection:

Petitioners object to Exhibit 2011, and Patent Owner's reference to or reliance thereon, under F.R.E. 402 (relevance) and 403 (confusing, waste of time, unfair prejudice) as this declaration was filed in a different forum with a different claim construction standard and its use would unfairly prejudice Petitioners, waste time and confuse the issues in this proceeding.

III. OBJECTIONS TO EXHIBITS 2023 AND 2064 AND ANY REFERENCE

TO/RELIANCE THEREON IN THIS PROCEEDING

Evidence objected to: Exhibits 2023 and 2064 and any reference to or reliance thereon in this proceeding. Exhibit 2023 is a copy of excerpts from a petition for *inter partes* review from *inter partes* review proceeding IPR2016-01261. Exhibit 2064 is a copy of excerpts from a declaration of Dr. Thomas F. La Porta from *inter partes* review proceeding IPR2016-01261. IPR2016-01261 is a different proceeding from this proceeding (IPR2016-01262), and Petitioners challenge a different patent, and different claims in such patent, in IPR2016-01261 than in this proceeding.

Grounds for objection:

Petitioners object to Exhibits 2023 and 2064, and Patent Owner's reference to or reliance thereon in this proceeding, under F.R.E. 106 (incomplete), 402 (relevance), 403 (confusing, waste of time, unfair prejudice), and/or 1006 (improper summary), because the exhibits do not contain the opinions of Dr. Thomas F. La Porta, or the submissions of Petitioners, that are relevant to this proceeding, the challenged patent in this proceeding, nor the challenged claims in this proceeding.

IV. OBJECTIONS TO EXHIBIT 2041 AND ANY REFERENCE TO/RELIANCE THEREON IN THIS PROCEEDING

Evidence objected to: Exhibit 2041 and any reference to or reliance thereon in this proceeding. Exhibit 2041 is Patent Owner's "Listing of Section 112 Written

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