

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

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

v.

FOCAL IP, LLC,  
Patent Owner.

---

Case: IPR2016-01261 (Patent 8,457,113 B2) and  
Case: IPR2016-01262 (Patent 7,764,777 B2)<sup>1</sup>

---

Before SALLY C. MEDLEY and BARBARA A. PARVIS,  
*Administrative Patent Judges.*

PARVIS, *Administrative Patent Judge.*

ORDER  
Conduct of the Proceeding  
37 C.F.R. § 42.5

On September 6, 2017, a call was held with respective counsel for the parties and Judges Medley and Parvis regarding Petitioner's request to file

---

<sup>1</sup> This Order applies to each of the listed cases. We exercise our discretion to issue one Order to be docketed in each case. The parties, however, are not authorized to use this caption for any subsequent papers.

IPR2016-01261 (Patent 8,457,113 B2)

IPR2016-01262 (Patent 7,764,777 B2)

corrections to its Motions to Exclude in IPR2016-01261 (Paper 50) and IPR2016-01262 (Paper 50). Patent Owner opposes Petitioner's request.

Petitioner requests refiling its Motions to Exclude with reordered arguments to address objections in numerical order. According to 37 C.F.R. § 42.64(c) “[t]he motion must identify the objections in the record *in order* and must explain the objections” (emphasis added). Patent Owner opposes Petitioner's request on the basis that identifying the objections in the record in order is a substantive threshold requirement.

At this stage of the proceeding, we need not determine whether identifying the objections in the record in order is a substantive threshold requirement set forth in 37 C.F.R. § 42.64(c). In the instant proceedings, Patent Owner already has filed its Oppositions to Petitioner's Motions to Exclude. IPR2016-01261, Paper 51; IPR2016-01262, Paper 51. Petitioner has not provided us with a persuasive reason why we should allow correction at this stage in the proceeding, after the filing of Patent Owner's Opposition. Accordingly, we deny Petitioner's request.

For the foregoing reasons, it is hereby:

ORDERED that Petitioner's request to submit corrected Motions to Exclude is *denied*.

IPR2016-01261 (Patent 8,457,113 B2)

IPR2016-01262 (Patent 7,764,777 B2)

PETITIONER:

Patrick McPherson

[pdmcpherson@duanemorris.com](mailto:pdmcpherson@duanemorris.com)

Christopher Tyson

[cjtyson@duanemorris.com](mailto:cjtyson@duanemorris.com)

Wayne Stacy

[Wayne.stacy@bakerbotts.com](mailto:Wayne.stacy@bakerbotts.com)

PATENT OWNER:

Brent Bumgardner

[bbumgardner@nbclaw.net](mailto:bbumgardner@nbclaw.net)

John Murphy

[murphy@nelbum.com](mailto:murphy@nelbum.com)