

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRIGHT HOUSE NETWORKS, LLC
Petitioners,

v.

FOCAL IP, LLC,
Patent Owner.

Case IPR2016-01259 (Patent 8,155,298 B2)
Case IPR2016-01261 (Patent 8,457,113 B2)
Case IPR2016-01262 (Patent 7,764,777 B2)
Case IPR2016-01263 (Patent 8,155,298 B2)

Record of Oral Hearing
Held: September 19, 2017

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

Case IPR2016-01259 (Patent 8,155,298 B2)
Case IPR2016-01261 (Patent 8,457,113 B2)
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Case IPR2016-01263 (Patent 8,155,298 B2)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing Tuesday,
September 19, 2017, commencing at the U.S. Patent and Trademark
Office, 600 Dulany Street, Alexandria, Virginia.

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1 PROCEEDINGS

2 JUDGE PARVIS: Good afternoon, everyone. This is the oral
3 argument in IPR2016-01259, and IPR2016-1261 through 1263.

4 These inter partes reviews involve the challenged patents, the same
5 three that we discussed this morning, U.S. Patent Nos. 7,764,777 B2;
6 8,155,298 B2; and 8,457,113 B2.

7 Petitioners are Bright House Networks, LLC, WideOpenWest
8 Finance, LLC, Knology of Florida, Incorporated, and Birch
9 Communications.

10 Patent owner is Focal IP, LLC.

11 As a reminder, the petitioners jointly filed the petitions and will be
12 expected to speak with one voice.

13 The same ground rules explained this morning apply to the
14 presentations this afternoon.

15 Now, petitioner -- counsel for the petitioner, will you please
16 introduce yourselves and those with you.

17 MR. TYSON: Yes. Thank you.

18 Good afternoon, Your Honors. Chris Tyson with Duane Morris for
19 the petitioners. With me is Pat McPherson, also of Duane Morris, for
20 petitioners. And I have Wayne Stacy and Jay Schiller of Baker Botts,
21 and Jaspal Hare of Spencer Fane.

22 JUDGE PARVIS: Patent owner.

23 MR. BUMGARDNER: Good afternoon, Your Honors.

24 Brent Bumgardner, John Murphy, and Tom Cecil for patent owner.
25 Also here is Vic Siber and Hanna Madbak. And also here observing is

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1 Barry Bumgardner.

2 JUDGE PARVIS: Thank you.

3 So any time you're ready, Counsel for the petitioner, you may
4 proceed.

5 MR. TYSON: Thank you, Your Honor.

6 May it please the Board, good afternoon again, Your Honors. I'd
7 like to reserve at least 20 minutes for rebuttal.

8 The purpose of the hearing today is to direct the board to evidence
9 of record that supports dispositive facts that are in our petition.

10 Now, per our request for oral argument, we had spoken with the
11 petitioner at Cisco. And in the interest of the Board's time and as we
12 forth in that request, we will not be repeating overlapping arguments
13 between the two cases.

14 Now, there's been a lot of papers filed in these cases, but there
15 really are many common issues that persist across the IPRs.

16 And so the arguments today, what I'd like to do is just focus on just
17 a few common issues that we think are -- that we submit are dispositive
18 of the case.

19 And with that, I think it's useful to discuss the challenged patents,
20 actually to provide a foundation for the state of the art and the grounds.

21 And I'm putting on the Elmo here, this is page 4 of the Board's
22 institution decision in the '113 patent. And this is for the '113 patent, but
23 it applies equally. All the patents, as we know, share a common
24 specification.

25 So what I'd like to point out -- and the Board has already reflected

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1 this in its annotations -- is that there is no secret sauce in the switches that
2 are in the PSTN. There is no secret sauce in the signaling system that the
3 PSTN uses, SS7.

4 And, essentially, there is also all the signaling switches that passes
5 in between those switches. There's no secret sauces. That's not where --
6 what the patents are talking about.

7 The patent doesn't disclose any new signaling. Now, signaling is
8 an important term. And it's been a little bit glossed over this morning. I'd
9 like to talk about signaling. Are those signaling messages that are sent to
10 set up, to create a path for establishing voice communication?

11 So that applies equally to both circuit switch and packet switch
12 networks. Here we're talking about the PSTN, circuit switch network.

13 Now, also in this drawing, in this Figure 1, which is really,
14 essentially, the first -- one of the embodiments of the patent, we have
15 what's called this web. And we have a user interface and we have a
16 device there that connects to the web.

17 Now, there's no secret sauce in the web. That web is not a cloud.
18 It's -- you know, it's thousands of routers that flow in between that
19 communicate messages back and forth, that packetize messages.

20 And the use of the web here, depicted in Figure 1, as a portal by
21 which a subscriber -- or it could be also the calling party if they're a
22 subscriber -- can connect into the Internet -- connect to the Internet,
23 through the web into a web server to add and change call control
24 information, the patent acknowledges there's no secret sauce there either.

25 So all of this is conventional. The patent acknowledges it's

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