

Filed on behalf of TQ Delta, LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DISH NETWORK, LLC  
Petitioner

v.

TQ DELTA, LLC  
Patent Owner

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Case No. IPR2016-01470  
Patent No. 8,611,404

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**PATENT OWNER'S PRELIMINARY RESPONSE**

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## I. INTRODUCTION

Patent Owner TQ Delta, LLC (“Patent Owner”) submits this preliminary response to the Petition filed by Dish, Inc. (“Petitioner”) requesting *inter partes* review of claims 6, 11, 16, and 20 of U.S. Pat. No. 8,611,404 (“the ’404 patent”).

This is the second IPR petition filed against the ’404 patent. The first petition, filed in IPR2016-01160 by Arris Group, Inc. (a party similarly situated with Petitioner as a supplier of products accused of infringement in the related litigation identified in the Petition), is awaiting a decision regarding institution. In that petition, Arris challenged at least the same four claims as here. Arris also did so by asserting the same three prior art references (albeit the provisional patent application version of one reference rather than the EP publication, although Patent Owner does not dispute any relevant distinction). Patent Owner submitted a Preliminary Response to Arris’ petition, explaining how it consisted of merely cobbling together unrelated concepts from the three different references, based on only illogical and conclusory rationales. *See* IPR2016-01160 at Paper 7.

This second Petition against the ’404 patent is deficient for similar reasons. Here, Petitioner raises a single Ground of alleged unpatentability for obviousness. Each of the asserted prior art references, however, differs significantly from the inventions claimed by the ’404 patent. At least two claim elements are missing from each of the asserted prior art references. Petitioner’s attempt to manufacture

those elements from the prior art—by splitting them up into separate words (to ignore the actual invention) and then tacking together unrelated features from the prior art—cannot show obviousness. Moreover, Petitioner fails to provide any non-conclusory, non-hindsight reasons for combining or modifying the references. Petitioner also provides no support that persons of ordinary skill in the art would have reasonably expected its proposed modifications would work. At this stage, the Board can decline instituting trial because the Petition is deficient for the following reasons:

**References Fail to Disclose All Claim Limitations.** First, Petitioner's asserted obviousness combination still fails to disclose at least two limitations required by each of claims 6, 11, 16, and 20. Petitioner has not shown that any of the references discloses an apparatus operable to “[store/storing], in a low power mode, at least one parameter associated with the full power mode operation wherein the at least one parameter comprises at least one of a fine gain parameter and a bit allocation parameter,” or operable to “[exit/exiting] from the low power [mode] and [restore/restoring] the full power mode by using the at least one parameter and without needing to reinitialize the transceiver.”

Petitioner ignores that the full text of the claims requires intertwined concepts in both of these limitations. For example, Petitioner does not identify any disclosure or teaching in the references of storing a fine gain parameter or bit

allocation parameter while in low power mode. Rather, Petitioner improperly splits this claim element up into individual words. Petitioner first points to alleged disclosure in U.S. Pat. No. 5,956,323 (“Bowie”) of a transceiver with a low power mode, which allegedly stores during that low power mode “loop characteristics” (i.e., information about the transmission line itself). (*See infra* at § IV.B.) Separately, Petitioner points to the 1995 ANSI T1.413 Standard (“ADSL 1995”), which Petitioner concedes does not disclose any low power mode at all, much less any ability to store any parameters in a low power mode. (*See id.*) Petitioner just alleges that ADSL 1995 discloses the existence of fine gain and bit allocation parameters in general (parameters regarding the information to be transmitted), in an entirely different context. (*See id.*) Petitioner’s argument is akin to asserting that the first telephone was just an obvious combination of the concepts of electrical wires and sound waves—ignoring necessary teaching or disclosure of *intertwining* those two concepts.

Similarly, Petitioner has not shown that any of the references disclose using stored fine gain or bit allocation parameters to restore full power mode from a low power mode. Petitioner just points to Bowie’s disclosure of using its very different stored “loop characteristics” to allegedly restore full power from a low power mode, and again also points to ADSL 1995’s disclosure of the existence of fine gain and bit allocation parameters in a different context. Petitioner does not show

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