

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK L.L.C.,
Petitioner

v.

BROADBAND iTV, INC.,
Patent Owner

Case IPR2020-01267
Patent 10,028,026 B2

**PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Broadband iTV, Inc., (“BBiTV”) hereby objects under the Federal Rules of Evidence (“FRE”) to the admissibility of Exhibits 1011 (“CableLabs Specification”), 1012 (“Poland Decl.”), 1022 (“Unified Patents”), 1023 (“Judge Albright Patent Statistics”), 1025 (“Family Chart for the ’997 patent”), 1028 (“Claim 1 with Examiner Additions Highlighted”), 1030 (“Comcast Annual Report”), 1031 (“Time Warner 10-K”), 1032 (“AT&T U-Verse Wiki”), 1038 (“Explorer 4200 Set-Top”), 1039 (“Samsung OpenCable Certification”), 1040 (“Razor V3 Article”), 1041 (“CableLabs OpenCable – Wayback Machine”), 1042 (“Google Article – Wayback Machine”), 1043 (“Mpeg-2 Wiki”), 1044 (“Sony’s PS3 Debut Article”), 1045 (“Fed. Cir. Model Patent Jury Instructions”), 1046 (“CableLabs Library”), 1047 (“Merriam-Webster.com Definition”), and 1048 (“Document Detail from CableLabs”), which Petitioner DISH Network, L.L.C. (“DISH”) filed with the Petition on July 10, 2020.

BBiTV timely objects under 37 C.F.R. § 42.64(b)(1) within the allowed ten business days of institution of trial in this proceeding. BBiTV files and serves DISH with these objections to provide notice that BBiTV may move to exclude Exhibits 1011, 1012, 1022, 1023, 1025, 1028, 1030-1032, and 1038-1048, or portions thereof, under 37 C.F.R. § 42.64(c).

I. EXHIBIT 1011

FRE 401, 402, and 403: BBiTV objects to Exhibit 1011 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent DISH relies on the contents of this document for the truth of the matter asserted, BBiTV objects to Exhibit 1011 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

FRE 901 and 902: BBiTV objects to Exhibit 1011 as not properly authenticated under FRE 901 because DISH has not presented evidence sufficient to support a finding that the document in question is what DISH claims. There is no evidence that the document is self-authenticating under FRE 902.

II. EXHIBIT 1012

FRE 401, 402, and 403: BBiTV objects to Exhibit 1012 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 602: BBiTV objects to paragraphs 4-7 of Exhibit 1012 because the declarant lacks personal knowledge.

FRE 701: To the extent DISH relies on the contents of this document, BBiTV objects to Exhibit 1012 as inadmissible for being improper opinion testimony by a lay witness.

FRE 801 and 802: To the extent DISH relies on the contents of this document for the truth of the matter asserted, BBiTV objects to Exhibit 1012 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

FRE 901: BBiTV objects to Exhibit 1012 as not properly authenticated under FRE 901 because DISH has not presented evidence sufficient to support a finding that the document in question is what DISH claims and because Exhibit 1012 lacks a proper S-Signature under 37 C.F.R. §§ 1.4(d)(2), 1.66, 1.68, 42.6(a)(4), and 42.63(a).

III. EXHIBITS 1022, 1023, 1025, 1028, 1030-1032, AND 1038-1048

FRE 106: BBiTV objects to Exhibits 1030, 1031, 1047, and 1048 because they are incomplete.

FRE 401, 402, and 403: BBiTV objects to Exhibits 1022, 1023, 1025, 1028, 1030-1032, and 1038-1048 for including information that is irrelevant or whose probative value to any ground upon which trial was instituted is substantially

outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

FRE 801 and 802: To the extent DISH relies on the contents of these documents for the truth of the matter asserted, BBiTV objects to Exhibits 1022, 1023, 1025, 1028, 1030-1032, and 1038-1048 as inadmissible hearsay under FRE 801 and 802 that does not fall under any exception.

FRE 901 and 902: BBiTV objects to Exhibits 1022, 1023, 1025, 1028, 1030-1032, and 1038-1048 as not properly authenticated under FRE 901 because DISH has not presented evidence sufficient to support a finding that the document in question is what DISH claims. There is no evidence that the documents are self-authenticating under FRE 902.

IV. EXHIBIT 1002

BBiTV objects to Exhibit 1002 to the extent it relies on Exhibits 1011, 1012, 1022, 1023, 1025, 1030-1032, and 1038-1048 for the same reasons as provided above. BBiTV also objects to Exhibit 1002, specifically at least ¶¶ 20-23, 27-30, 34, 35, 57, 59, 62, 63, 65, 73, 77, 84, 90, 92, 96, 135-141, 143, 144, 149, 152, 154, 156, 158, 162, 166, 174, 177, 178, 179, 180, 182, 186, 188, 193, 197, 203, 210, 212, 213, 224, 230, 231, 234, 236, 239, 245, 254, 268, 277, 281, 287, 293, 295, 296, 299, 300, and 302 as improper expert testimony under FRE 702 and 703. The testimony is based on insufficient facts or data, is not the product of reliable

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