

**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 No. IPR2020-01267  
U.S. Patent No. 10,028,026

---

**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE**

**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. GONDER IS PRIOR ART TO THE '026 PATENT .....	1
A. The '192 Application Does Not Reduce an “Internet-Connected Digital Device” to Practice.....	2
B. BBiTV cannot show prior conception of the claimed “Internet-connected digital device.” .....	9
C. BBiTV cannot show prior conception of reserved area content that is “generated using the received video content.” .....	14
III. Gonder incorporates CableLabs by reference. ....	15
IV. GONDER TEACHES THE CLAIMED THIRD LAYER.....	17
A. The “generated using” language is not limiting for purposes of obviousness. ....	17
B. Gonder renders obvious displaying reserved content generated using images.....	19
a. Figures 4 and 5b shows “reserved area content” generated using images.....	22
b. Figure 7 shows “reserved area content” generated using images. ....	25
V. A POSITA WOULD BE MOTIVATED TO COMBINE GONDER AND SON.....	31
VI. The dependant Claims Are OBVIOUS. ....	33
A. Claim 6 .....	33
B. Claims 11 and 12.....	34
C. Claim 15 .....	36
VII. BBiTV Provides No Valid Secondary Considerations Of Non-Obviousness.....	36

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Biogen MA Inc. v. EMD Serono, Inc.</i> , 976 F.3d 1326 (Fed. Cir. 2020) .....	18, 19
<i>Burroughs Wellcome Co. v. Barr Labs., Inc.</i> , 40 F.3d 1223 (Fed. Cir. 1994) .....	11
<i>Coleman v. Dines</i> , 754 F.2d 353 (Fed. Cir. 1985) .....	10
<i>Cook Biotech, Inc. v. Acell, Inc.</i> , 460 F.3d 1365 (Fed. Cir. 2006) .....	6
<i>D Three Enters., LLC v. SunModo Corp.</i> , 890 F.3d 1042 (Fed. Cir. 2018) .....	9
<i>Flash-Control, LLC v. Intel Corp.</i> , No. 2020-2141, 2021 U.S. App. LEXIS 20790 (Fed. Cir. July 14, 2021) .....	7, 8
<i>Hyatt v. Boone</i> , 146 F.3d 1348 (Fed. Cir. 1998) .....	2
<i>KSR Int'l Co. v. Teleflex Inc.</i> 550 U.S. 398 (2007).....	35
<i>Kyrides v. Andersen</i> , 28 C.C.P.A. 1336, 121 F.2d 514 (C.C.P.A. 1941) .....	8
<i>Modine Mfg. Co. v. U.S. Int'l Trade Comm'n</i> , 75 F.3d 1545 (Fed. Cir. 1996) .....	7
<i>Singh v. Brake</i> , 317 F.3d 1334 (Fed. Cir. 2003) .....	10

**PETITIONER’S EXHIBIT LIST**

<i>Exhibit</i>	<i>Description</i>
<b>1001</b>	U.S. Patent No. 10,028,026 (“’026 patent”)
<b>1002</b>	Declaration of Dr. Samuel Russ
<b>1003</b>	Intentionally omitted
<b>1004</b>	Curriculum Vitae for Dr. Samuel Russ
<b>1005</b>	U.S. Patent No. 8,434,118 (“Gonder”)
<b>1006</b>	U.S. Patent No. 7,159,233 (“Son”)
<b>1007</b>	U.S. Patent Application Publication No. 2001/0030667 (“Kelts”)
<b>1008</b>	Intentionally omitted
<b>1009</b>	Intentionally omitted
<b>1010</b>	Intentionally omitted
<b>1011</b>	CableLabs Video-On-Demand Content Specification Version 1.1
<b>1012</b>	Declaration of Christie Poland
<b>1013</b>	U.S. Patent No. 7,631,336 (“’336 patent”)
<b>1014</b>	Intentionally omitted
<b>1015</b>	Scheduling Order, <i>Broadband iTV, Inc v. DISH Network, L.L.C.</i> , Case No. 6:19-cv-716-ADA (W.D. Tex. Apr. 10, 2020), ECF No. 34
<b>1016</b>	Civil Minutes-General, <i>DivX, LLC v. Netflix, Inc., et al.</i> , 19-cv-1602-PSG (DFMx) (C.D. Cal. May 11, 2020)
<b>1017</b>	U.S. Patent No. 7,590,997 (“’997 patent”)
<b>1018</b>	File History of U.S. Patent No. 10,028,026 (“’026 File History”)
<b>1019</b>	Claim Construction Order, <i>Broadband iTV, Inc. v. Hawaiian Telcom, Inc., et al.</i> , 14-00169 ACK-RLP (D. Haw. June 24, 2015)
<b>1020</b>	U.S. Patent Application Publication No. 2002/0138619 (“Ramaley”)
<b>1021</b>	Western District of Texas Order RE: COVID-19 dated May 8, 2020
<b>1022</b>	Unified Patent’s Q1 2020 Patent Dispute Report (March 31, 2020)
<b>1023</b>	Judge Alan D. Albright Patent Statistics
<b>1024</b>	Excerpt from File History for related U.S. Patent Application No. 12/632,745
<b>1025</b>	Family Chart for the ’997 patent
<b>1026</b>	Broadband iTV, Inc.’s Preliminary Infringement Contentions and Identification of Priority Dates cover pleading dated April 30, 2020
<b>1027</b>	Broadband iTV, Inc.’s Claim Chart for U.S. Patent No. 10,028,026 (Ex. 1) dated April 30, 2020
<b>1028</b>	Highlighted Claim 1 for ’026 Patent
<b>1029</b>	Intentionally omitted

<i>Exhibit</i>	<i>Description</i>
1030	Comcast's 2004 Annual Report – Excerpts <a href="http://www.annualreports.com/HostedData/AnnualReportArchive/c/NASDAQ_CMCSA_2004.pdf">http://www.annualreports.com/HostedData/AnnualReportArchive/c/NASDAQ_CMCSA_2004.pdf</a>
1031	Time Warner, Inc.'s Form 10-K for the year 2003 – Excerpts <a href="http://getfilings.com/o0000950144-04-002438.html">http://getfilings.com/o0000950144-04-002438.html</a>
1032	AT&T U-Verse Wikipedia page <a href="https://en.wikipedia.org/wiki/AT%26T_U-verse">https://en.wikipedia.org/wiki/AT%26T_U-verse</a> .
1033	Western District of Texas Order RE: COVID-19 dated June 18, 2020
1034	Western District of Texas Order RE: COVID-19 dated July 2, 2020
1035	Minute Entry, <i>MV3 Partners LLC v. Roku, Inc.</i> , No. 6:18-cv-00308-ADA (W.D. Tex., Jun. 15, 2020), ECF 293
1036	Intentionally omitted
1037	Intentionally omitted
1038	Scientific-Atlanta Launches Explorer 4200 Set-Top, <a href="https://www.tvtechnology.com/equipment/scientificatlanta-launches-explorer-4200-settop">https://www.tvtechnology.com/equipment/scientificatlanta-launches-explorer-4200-settop</a> .
1039	Samsung gains first OpenCable Certification on two-way digital television, <a href="https://www.tvtechnology.com/news/samsung-gains-first-opencable-certification-on-twoway-digital-television">https://www.tvtechnology.com/news/samsung-gains-first-opencable-certification-on-twoway-digital-television</a>
1040	The Razor V3 was launched 14 years ago: Here's why it still has a place in our hearts, <a href="https://www.androidauthority.com/motorola-razr-v3-888664/">https://www.androidauthority.com/motorola-razr-v3-888664/</a>
1041	CableLabs OpenCable - www.opencable website Way Back Machine capture, <a href="https://web.archive.org/web/20060326111508/http://www.opencable.com/ocap/ocap.html">https://web.archive.org/web/20060326111508/http://www.opencable.com/ocap/ocap.html</a>
1042	Google pays the price to capture online video zeitgeist, Way Back Machine capture, <a href="https://web.archive.org/web/20070901031352/http://www.eurekastreet.com.au/article.aspx?aeid=1837">https://web.archive.org/web/20070901031352/http://www.eurekastreet.com.au/article.aspx?aeid=1837</a>
1043	Mpeg-2 Wikipedia page, <a href="https://en.wikipedia.org/wiki/MPEG-2">https://en.wikipedia.org/wiki/MPEG-2</a>
1044	Sony's PS3 makes U.S. debut to long lines, short supplies, <a href="https://usatoday30.usatoday.com/tech/gaming/2006-11-17-ps3-debut_x.htm">https://usatoday30.usatoday.com/tech/gaming/2006-11-17-ps3-debut_x.htm</a>
1045	The Federal Circuit Bar Association Model Patent Jury Instructions, last edited May 2020

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.