

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

U.S. Patent No. 10,028,026
Issue Date: July 17, 2018

Title: SYSTEM FOR ADDRESSING ON-DEMAND TV PROGRAM
CONTENT ON TV SERVICES PLATFORM OF A DIGITAL TV
SERVICES PROVIDER

Case No. IPR2020-01267

REPLY DECLARATION OF DR. SAMUEL H. RUSS, PH.D.

DISH Ex. 1053, p. 1
DISH v. BRiTV

TABLE OF CONTENTS

	Page
I. INTRODUCTION	4
II. GONDER IS PRIOR ART TO CLAIMS 1-9 OF THE '026 PATENT.....	8
A. Legal Standard.....	9
B. The '192 Application did not constructively reduce an “Internet-connected digital device” to practice.....	10
C. No evidence Corroborates Mr. Diaz’s alleged conception of an “Internet-connected digital device.”	32
i. The February Presentation shows no evidence of conception of an “Internet-connected digital device.”	35
ii. The March Draft shows no evidence of conception of an “Internet-connected digital device.”	35
iii. The April Development Document shows no evidence of conception of an “Internet-connected digital device.”	39
D. No evidence corroborates Mr. Diaz’s alleged conception of third layer content that is “generated using the received video content.”	47
i. The February Presentation shows no evidence of conception of third layer content that is “generated using the received video content.”	48
ii. The March Draft shows no evidence of conception of third layer content that is “generated using the received video content.”	50
iii. The April Development Document shows no evidence of conception of third layer content that is “generated using the received video content.”	52
III. Gonder incorporates CableLabs by reference.	53
IV. GONDER TEACHES THE CLAIMED THIRD LAYER.....	57
A. Figures 4 and 5b show “reserved area content” generated using images.....	64

TABLE OF CONTENTS
(continued)

	Page
B. Figure 7 shows “reserved area content” generated using images.....	67
V. A POSITA WOULD BE MOTIVATED TO COMBINE GONDER AND SON.....	75
VI. The dependant Claims Are OBVIOUS.	77
A. Claim 6	77
B. Claims 11 and 12.....	78
C. Claim 15	81
VII. CONCLUSION.....	82

I, Samuel H. Russ, Ph.D. declare as follows:

I. INTRODUCTION

1. I have been retained by DISH Network L.L.C. (“DISH”) as an independent expert consultant in this proceeding before the United States Patent and Trademark Office (“PTO”). I am not an employee of DISH or any affiliate or subsidiary of DISH.

2. I have already submitted a declaration in this proceeding concerning technical subject matter relevant to the above-captioned *inter partes* review (“IPR”) of U.S. Patent No. 10,028,026 (EX1001, “the ’026 patent”). My prior declaration is EX1002.

3. A summary of my education, professional experience, and other qualifications is included in EX1002 ¶¶ 5-13.

4. I have been asked to review Broadband iTV, Inc.’s (“BBiTV”) Patent Owner Response and the exhibits and declarations submitted therewith, and provide my opinions on some of the statements and arguments offered in those materials. My opinions and the bases for my opinions are set forth below.

5. I am being compensated at my ordinary and customary consulting rate (\$350 per hour) for my work, plus reimbursement for any reasonable expenses. My compensation is based solely on the amount of time that I devote to activity related to this case and is in no way contingent on the nature of my findings, the

DISH Ex. 1053, p. 4
DISH v. BBiTV

presentation of my findings in testimony, or the outcome of this or any other proceeding. I have no other financial interest in this proceeding.

6. I note that BBiTV raised several positions in its Patent Owner Response in order to meet its various burdens. I further note that Dr. Shamos raised several arguments in his declaration that were not included in BBiTV's Patent Owner response. In this reply declaration, I did not attempt to rebut every argument that appeared in BBiTV's Patent Owner Response or Dr. Shamos's declaration with which I disagreed. Instead, I focused on the arguments that are most likely to be relevant to the outcome of this proceeding. As such, the opinions expressed in this declaration are not exhaustive of my opinions regarding the unpatentability of the claims of the '026 patent. The fact that I do not address a particular point should not be understood to indicate an agreement or concession on my part.

7. I reserve the right to amend and supplement this declaration in light of additional evidence, arguments, or testimony presented during this IPR or related proceedings on the '026 patent.

8. In forming the opinions set forth in this declaration, I have considered and relied upon my education, knowledge of the relevant field, knowledge of scientific and engineering principles, and my experience. I have also reviewed and

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.