

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK LLC,

Petitioner,

v.

ENTROPIC COMMUNICATIONS, LLC,

Patent Owner.

CASE: IPR2024-00393

U.S. PATENT NO. 7,295,518

**PATENT OWNER'S OPPOSITION
TO PETITIONER'S MOTION TO EXCLUDE**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
	A. Exhibit 2008 is a Legal Order That Must Be Considered.....	2
	B. Exhibit 2008 is a Proper Submission that Could Not Have Reasonably Been Obtained Earlier	3
	C. Exhibit 2008 is Relevant to Issues in This Proceeding	4
II.	Conclusion.....	5

I. INTRODUCTION

Petitioner’s Motion to Exclude Exhibit 2008 (Paper 33) should be denied. Petitioner’s sole basis for moving to exclude Exhibit 2008, an order from the co-pending district court case regarding the scope of the ’518 Patent, is because it is alleged “irrelevant.” That Petitioner would try to hide Exhibit 2008 is itself concerning. But, setting aside the attempt to limit the record as it relates to prior orders regarding the patent at issue in this proceeding, Petitioner’s Motion is rendered moot by the fact that Exhibit 2008 is itself a district court decision that is properly cited to via legal citation in PO’s Sur-Reply. *See* Paper 30 at 7-8.

Regarding whether or not reliance on Exhibit 2008 at all is proper, the decision in *Entropic Comm’s Inc. v. DISH Network Corp. et al.*, 2:32-cv-01043, Dkt. 575 (CDCA Feb. 24, 2025) issued shortly before PO brought the decision to the attention of the Board via mandatory notice. *See* 37 C.F.R. § 42.8(b)(2) (requiring the parties to “[i]dentify any other judicial or administrative matter that would affect, or be affected by, a decision in the proceeding”). The decision “would affect” a decision in this proceeding. *Id.* PO acted diligently upon the issuance of the decision in bringing it to the Board’s attention. Even if not proper via mandatory notice, PO has sought leave to provide the exhibit via supplemental information. Petitioner opposes not just the entry of Exhibit 2008 as supplemental information, but also opposes PO’s request for briefing, without articulating a basis to oppose the briefing.

Finally, Exhibit 2008 is relevant to this proceeding because, as an Article III Court's statement regarding the scope and content of the '518 Patent, it helps define what the '518 Patent is directed to, an inquiry relevant to the analogous art analysis.

A. Exhibit 2008 is a Legal Order That Must Be Considered

Exhibit 2008 is a PDF of a legal decision issued from a co-pending district court case. Whether or not the PDF is part of the proceeding, the legal decision is properly cited and relied upon in the proceeding. As a result, Petitioner's Motion is nothing more than form over substance and begs the question of why tax the Board's time with additional briefing and issues that have no impact on the outcome of the proceeding. Adding to the oddities, not only did Petitioner move to exclude the text of the Order, it also opposed PO's request for briefing (not any motion itself, but the actual request for briefing). The extent to which Petitioner appears to go to hide this information from the Board is troubling, given that Exhibit 2008 is nothing more than a PDF of what is presently controlling law on the issue. This is no different than if PO had submitted the text of *KSR* for the convenience of the Board, while also citing *KSR* for the proposition advanced in the paper, and because Petitioner did not like the *KSR* law, sought to exclude the exhibit.

B. Exhibit 2008 is a Proper Submission that Could Not Have Reasonably Been Obtained Earlier

Petitioner omits the relevant timeline, which demonstrates that Exhibit 2008 could not have reasonably been obtained earlier pursuant to 37 C.F.R. 42.123(b). On February 24, 2025, the District Court issued an order relevant to the proceeding. Patent Owner updated its Mandatory Notice on March 4, 2025, approximately one week later, providing the relevant material for the Board. *See* Paper, 24; Paper 25.

Further, Exhibit 2008 was a proper submission and mandatory under 37 C.F.R. §§42.51(b) and 42.8(b)(2). Under 37 C.F.R. § 42.51(b), a party “must serve relevant information that is inconsistent with a position advanced by the party during the proceeding.” As explained in Section I.C, Exhibit 2008 is both relevant and inconsistent with Petitioner’s arguments in this proceeding. Further, under 37 C.F.R. § 42.8(b)(2), a party must “[i]dentify any other judicial or administrative matter that would affect, or be affected by, a decision in the proceeding.” Exhibit 2008 falls within § 42.8(b)(2) because it is a legal determination that would affect a decision in this proceeding. The submission of Exhibit 2008 was mandatory and proper.

By moving to exclude Exhibit 2008, Petitioner attempts to preclude the Board from considering the District Court’s Order, which is improper. Exhibit 2008 is a District Court order regarding the validity of the ’518 Patent, which impacts this proceeding.

C. Exhibit 2008 is Relevant to Issues in This Proceeding

Petitioner’s sole evidentiary challenge is based on relevancy. Contrary to Petitioner’s argument, Exhibit 2008 is relevant to this proceeding because it supports Patent Owner’s position that the ’518 Patent is specific to on-premises coaxial networks and is at odds with Petitioner’s contrary arguments. This is relevant because Petitioner and its expert, Dr. Williams, have consistently argued that a POSITA would have been motivated to apply the teachings of *Isaksson*—which is a twisted pair network—to various coaxial networks. *See, e.g.*, Paper 21 at 4–6. Patent Owner disagrees, explaining that the ’518 Patent is directed to on-premises coaxial networks and a POSITA would not have been motivated to use the twisted pair network of *Isaksson* in a combination to arrive at the Challenged Claims.

Moreover, Exhibit 2008 is relevant to whether *Isaksson* is analogous art, which is a key dispute amongst the parties. Patent Owner contends that the ’518 Patent solves impairments specific to on-premises communications between network devices over existing coaxial cable wiring. Paper 30 at 17. Petitioner responds that Patent Owner “improperly constrains” the problems of the ’518 Patent to coaxial cable networks and rather the problem falls within the broad category of “wired network impairments.” Paper 21 at 9–10. However, Exhibit 2008 (and the underlying district court determination, which is properly cited in the Sur-Reply regardless of the determination of Exhibit 2008) confirms that the ’518 Patent is

indeed specific to coaxial networks. Ex. 2008, 23–25 (holding that the claims of the ’518 Patent “solve[] a specific problem in the coaxial network area”).

Based solely on a “relevancy” challenge, Petitioner incredulously draws a line between the facts that underscore the § 101 analysis and the facts that underscore the § 103 analysis. No such line exists. Petitioner fails to address the technical relevance and only attempts to distinguish Exhibit 2008 based on the specific validity challenge. *See* Paper 33 at 3. This argument is not persuasive. While the District Court ruled on § 101, the holding is relevant to underlying questions in Petitioner’s challenges. As introduced above, these questions are at least relevant to (1) the problem that the ’518 Patent solves, (2) whether the solutions of the ’518 Patent can be applied to non-coaxial networks, and (2) whether *Isaksson*’s twisted pair network is analogous art.

Exhibit 2008 should not be excluded as relevant under 37 CFR § 42.123(b) and FRE 402.

II. CONCLUSION

Petitioner’s only alleged evidentiary basis to exclude Ex. 2008 is “relevance” and as an order from an Article III judge on the scope of the patent at issue in this proceeding, it is plainly relevant. As a result, Petitioner’s Motion should be denied.

Dated: April 10, 2025

Respectfully submitted,

By: /Erik Halverson/
Erik Halverson
Reg. No. 73,552
K&L GATES LLP
Four Embarcadero Center, Suite 1200
San Francisco, CA 94111
erik.halverson@klgates.com
T: (415) 882-8238

Counsel for Patent Owner

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2025, a true and correct copy of the foregoing was caused to be served on the following counsel of record for Petitioner by electronic mail at the following address:

Adam R. Shartzner
Ruffin B. Cordell
Michael J. Ballanco
Matthew P. Mosteller
John J. Thuermer
Timothy Riffe
Usman Khan
Alyaman Amer
Christopher Marchese
Fish & Richardson P.C.
60 South Sixth Street
Minneapolis, MN 55402
Tel: 202-783-5070
Fax: 877-769-7945
Email: IPR45035-0025IP1@fr.com

By: /Erik Halverson/
Erik Halverson
Reg. No. 51,654