

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COX COMMUNICATIONS, INC.
Petitioner

v.

AT&T INTELLECTUAL PROPERTY I, L.P.
Patent Owner

Case IPR2015-01227
Patent 7,907,714

Title: PROFILE MANAGEMENT SYSTEM INCLUDING USER INTERFACE
FOR ACCESSING AND MAINTAINING PROFILE DATA OF USER
SUBSCRIBED TELEPHONY SERVICES

**PATENT OWNER'S PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107**

TABLE OF CONTENTS

I.	Introduction	4
II.	Overview of the '714 Patent.....	8
III.	The Petition Should be Denied for Failing to Name All Real-Parties-in-Interest	9
A.	Regional Cox Entities.....	14
B.	CoxCom, LLC	17
C.	Conclusion.....	26
IV.	Claim Construction.....	26
A.	The Preamble of Claim 1 Should Be Afforded Patentable Weight	27
B.	The Petition Should Be Dismissed Because Petitioner Failed to Comply With 37 C.F.R. § 42.104(b)(3).....	29
V.	No Proposed Ground of Unpatentability Shows a Reasonable Likelihood of Prevailing.....	30
A.	Because <i>Blumhardt</i> Does Not Disclose the Features of the Independent Claims, Proposed Rejections A(1)-A(4) Do Not Show a Reasonable Likelihood of Prevailing.	31
1.	Proposed Rejection A(1) Should Not Be Adopted Because <i>Blumhardt</i> Does Not Disclose the Features of the Independent Claims.....	32
2.	Proposed Rejections A(2)-A(4) Do Not Show a Prima Facie Case of Obviousness	34
3.	Conclusion – Trial Cannot Be Instituted on Proposed Rejections A(1)-A(4).....	38
B.	<i>Buhrmann</i> Does Not Disclose the Features of Independent Claims 1 and 13, and Therefore Proposed Rejections B(1)-B(4) Do Not Show a Reasonable Likelihood of Prevailing.....	38
1.	Proposed Rejection B(1) Should Not Be Adopted Because <i>Buhrmann</i> Does Not Disclose the Features of the Independent Claims.....	39
2.	Proposed Rejections B(2)-B(4) Do Not Show a <i>Prima Facie</i> Case of Obviousness	45

3.	Conclusion –Trial Cannot Be Instituted on Proposed Rejections B(1)-B(4)	48
C.	<i>An</i> Does Not Disclose the Features of Independent Claims 1 and 13, and Therefore Proposed Rejections C(1)-C(3) Do Not Show a Reasonable Likelihood of Prevailing.	48
1.	Proposed Rejection C(1) Should Not Be Adopted Because <i>An</i> Does Not Disclose the Features of the Independent Claims.....	49
2.	Proposed Rejections C(2)-C(3) Do Not Show a <i>Prima Facie</i> Case of Obviousness	51
3.	Conclusion –Trial Cannot Be Instituted on Proposed Rejections C(1)-C(3)	53
D.	<i>Elliott</i> Does Not Disclose the Features of Independent Claims 1 and 13, and Therefore Proposed Rejections C(1)-C(3) Do Not Show a Reasonable Likelihood of Prevailing	53
1.	Proposed Rejection D(1) Should Not Be Adopted Because <i>Elliott</i> Does Not Disclose the Features of the Independent Claims.....	54
2.	Proposed Rejections D(2)-D(3) Do Not Show a <i>Prima Facie</i> Case of Obviousness	57
3.	Conclusion – Trial Cannot Be Instituted on Proposed Rejections D(1)-D(3).....	59
VI.	Conclusion	59
	Certificate of Service	63

I. Introduction

Patent Owner AT&T Intellectual Property I, L.P. (“AT&T IP” or “Patent Owner”) submits the following Preliminary Response to the *Revised* Amended Petition filed by Cox Communications, Inc. (“Cox” or “Petitioner”) on June 22, 2015, requesting *inter partes* review of claims 1-22 of U.S. Patent No. 7,907,714 (“the ’714 Patent”). Patent Owner respectfully requests that the Patent Trial and Appeal Board (“Board” or “PTAB”) **decline to institute** *inter partes* review of the ’714 Patent because Petitioner has failed to name all real parties-in-interest and has failed to show a reasonable likelihood of prevailing as to any of the claims challenged in the Petition.

First, Petitioner has failed in its statutory burden under § 312 to identify all real parties-in-interest. As explained more completely below, the Petition was filed: (i) without naming as real party-in-interest **CoxCom, LLC**, which has at least the opportunity to control this proceeding; and (ii) at the behest of *unnamed* real parties-in-interest in the form of regional Cox operating entities (hereinafter the “Regional Cox Entities,” *see infra* at 9-17) that are the *actual entities* that perform acts that stand accused in concurrent patent litigation concerning the ’714 Patent. In contrast, the Petitioner and sole *named* real party-in-interest is a holding company that appears to be little more than a *nominal plaintiff* without substantial interest other than that derived from *actual, but unnamed* real parties-in-interest.

More specifically, the Petition obscures the *actual* real parties-in-interest, at whose behest, and in whose ultimate interest, the Petition would appear to have been actually filed, and fails to name a party with the opportunity to control the proceeding. Instead of the *actual* real parties-in-interest, the Regional Cox Entities and/or CoxCom, LLC, the Petition substitutes a single nominal petitioner, Cox Communications, Inc., that is largely isolated from substantial direct infringement liability risks by at least two corporate layers of veils and for whom clear estoppels (as named Petitioner) would be of little meaningful consequence. Because Petitioner failed to name the *actual* real parties-in-interest, the Petition is defective for failure to meet the statutory requirements of § 312, and accordingly, the filing date should be vacated. Correction at this time to include these unnamed parties would be futile, as the Petition would be barred under § 315(b). Accordingly, no trial can be instituted on this defective petition.

Turning next to the substantive grounds, institution on this Petition should be denied based on Petitioner's failure to advance sufficient evidence to demonstrate a reasonable likelihood that any challenged claim of the '714 Patent is unpatentable. Specifically, in its anticipation-based "proposed rejections," of independent claims 1 and 13, Petitioner has failed in its fundamental burden to demonstrate (by argument, evidence, and claim construction positions) that: (i) all elements of the challenged claims are disclosed in an allegedly anticipatory

reference; and (ii) features described in the allegedly anticipatory references are arranged as in claims of the '714 Patent. Most notably, Petitioner has *utterly failed* to provide evidence to support disclosure in the allegedly anticipatory references (*Blumhardt, Buhrmann, An, and Elliott*) of limiting features in the preamble of claim 1, and has failed to allege (by way of claim construction positions or other argument) that these features should be considered non-limiting. Simply put, Petitioner's complete silence as to claim construction is fatal to its anticipation grounds.

Each *obviousness ground* alleged by Petitioner purports to show unpatentability of dependent claims only; each such ground rests on alleged anticipation of the independent claims. However, because Petitioner failed to carry its burden on the independent claims, the evidence proffered as supporting obviousness of the dependent claims cannot provide a reasonable likelihood of prevailing on which to institute trial. Moreover, the Petition lacks any evidence-backed reasons to combine the references in the manner claimed in the claims of the '714 Patent. Instead, impermissible hindsight reasoning runs rampant throughout the Petition.

Relative to both anticipation and obviousness grounds, it appears that Petitioner fundamentally misunderstands its burden to be one of simply proposing the broad contours of a series of "proposed rejections," then leaving the Board to

fill in the gaps, and Patent Owner to imagine the evidence and arguments on which it would seek to rely were trial instituted. ***That is not the nature of this proceeding.*** Rather, as the Board has itself stated, “[i]nter partes reviews are adversarial, adjudicative proceedings; as such, the Board’s findings in *inter partes* reviews rely on the arguments provided by the parties in their papers, as well as the testimony of witnesses. ... Petitioners have the responsibility to present, through argument and evidence, a reasonable likelihood of unpatentability of the challenged claims.”¹

It is not the Board’s job to fill in the blanks and correct Petitioner’s failings, or to “search the record and piece together what may support Petitioner’s arguments.” *Dominion Dealer Solutions, LLC v. Autoalert, Inc.*, Case IPR2013-00225, slip op. at 4 (PTAB Oct. 10, 2013) (Paper 15). Likewise it is not Patent Owner’s job to imagine and prebut, or police in a trial instituted on legally insufficient grounds, what unstated argument and/or unoffered evidence Petitioner may, *ex post facto*, seek to introduce after Patent Owner has filed its responsive pleadings. In short, Petitioner has simply not satisfied its burden to show *in its Petition* that there is a reasonable likelihood that it will prevail in establishing that

¹ *Mitsubishi Plastics, Inc. v. Celgard, LLC*, Case IPR2014-00524, Decision—Denying Petitioner’s Request for Rehearing, slip op. at 8 (PTAB Nov. 27, 2014) (Paper 27).

any challenged claim is unpatentable. Based on the scant evidence, argument and positions that Petitioner has chosen to present in its Petition, no trial should be instituted.

For at least these reasons, as further detailed herein, no trial should be instituted for any claim of the '714 Patent.

II. Overview of the '714 Patent

The '714 Patent discloses methods of providing customers the ability to access and maintain service profile data for a communications service. Ex. 1001, 3:49-67. Thus, the '714 Patent describes, for example, a method for accessing and maintaining profile data associated with a telecommunications service subscribed to by a user. Ex. 1001, 6:12-15. Profile data is stored on a telecommunications network, which executes the telecommunications service in accordance with the profile data. Ex. 1001, 4:33-36. A client hosting a user interface allows the user to view and update the profile data from a server, which obtains the profile data from the telecommunications network, and forwards the profile data to the client. The server also receives requests to update the profile data, such that a user can update his or her profile data without interacting with service personnel. Ex. 1001, 4:36-48.

III. The Petition Should be Denied for Failing to Name All Real-Parties-in-Interest

To be considered, a petition for *inter partes* review must identify all real-parties-in-interest. 35 U.S.C. § 312(a)(2). This statutory requirement is a “threshold issue.” *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, Case IPR2013-00453, slip op. at 7-8 (PTAB Jan 16, 2015 (Paper 88)).

Here, Petitioner failed to identify all real-parties-in-interest. Specifically, Petitioner should have named as real parties-in-interest the Regional Cox Entities (*see infra* at 10-11) that are defendants in the concurrent litigation and ultimately perform the acts accused of infringement, as they are “parties at whose behest the petition has been filed.” Trial Practice Guide, 77 Fed. Reg. 48756, 48759 (Aug. 14, 2012). Furthermore, CoxCom, LLC, a subsidiary of the named Petitioner, should have been properly identified as a real-party-in-interest, because the lines of corporate separation are blurred, and CoxCom, LLC has the opportunity to control the instant proceeding.

Cox entities are privately held and, accordingly, relationships between the Cox entities are both opaque and subject to change without public scrutiny. Discovery remains ongoing in related district court litigation (Ex. 2001, p. 24), and specifics of Cox entity corporate structures, intercompany agreements and/or relationships remain the subject of discovery requests that have not yet been answered. Nonetheless, given information that has been gleaned from public

filings in other disputes involving Cox entities, from public Dun & Bradstreet information, and/or from draft stipulations circulated by defendant Cox entities themselves in an effort to secure dismissal of certain parties from the district court litigation, a picture emerges. That picture, which is detailed herein using the evidence presently available, and without benefit of full discovery, suggests that *actual* real parties-in-interest have not been identified in the Petition. In the event that ongoing district court discovery and self-help fact gathering are unable to produce further information hidden behind the web of privately-held Cox entities, Patent Owner reserves the right to request that the Board grant additional discovery so as to definitively establish the relationships between Cox entities at the time the petition was filed and their interests relative to the present proceedings.²

By way of factual background, Patent Owner initiated a patent infringement suit (hereinafter the “District Court Litigation”) against Petitioner Cox Communications, Inc. (hereinafter “CCI”), CoxCom, LLC, and 30 regional Cox

² Given the ongoing discovery in the district court, Patent Owner believes that at least the third *Garmin* factor suggests that a request for additional discovery may be premature at the current time. *Garmin Int’l, Inc. v. Cuozzo Speed Techs.*, Case No. IPR2012-00001, Decision – On Motion for Additional Discovery, slip op. at 3 (PTAB March 5, 2013) (Paper 26). Patent Owner may seek additional discovery in this proceeding once other avenues are exhausted or prove ineffective.

operating entities³ (the “Regional Cox Entities”) for infringement of the ’714

Patent, and served all such parties with a complaint on August 29, 2014. Ex. 2002; Ex. 2001, pp. 17-19. In the District Court Litigation, AT&T entities assert infringement of, *inter alia*, the ’714 Patent by digital telephone products and services that Regional Cox Entities offer to customers around the country in the respective jurisdictions in which those respective Regional Cox Entities (and only those Regional Cox Entities) are authorized to operate by local franchising

³ Cox Arkansas Telcom, LLC, Cox Communications Arizona, LLC, Cox Arizona Telcom, LLC, Cox California Telcom, LLC, Cox Communications California, LLC, Cox Colorado Telcom, LLC, Cox Connecticut Telcom, LLC, Cox District of Columbia Telcom, LP, Cox Florida Telcom, LP, Cox Communications Georgia, LLC, Cox Georgia Telcom, LLC, Cox Iowa Telcom, LLC, Cox Idaho Telcom, LLC, Cox Communications Kansas, LLC, Cox Kansas Telcom, LLC, Cox Communications Gulf Coast, LLC, Cox Communications Louisiana, LLC, Cox Louisiana Telcom, LLC, Cox Maryland Telcom, LLC, Cox Missouri Telcom, LLC, Cox Nebraska Telcom, LLC, Cox Communications Omaha, LLC, Cox Communications Las Vegas, Inc., Cox Nevada Telcom, LLC, Cox North Carolina Telcom, LLC, Cox Ohio Telcom, LLC, Cox Oklahoma Telcom, LLC, Cox Rhode Island Telcom, LLC, Cox Communications Hampton Roads, LLC, and Cox Virginia Telcom, LLC.

authorities. Accused products include, *inter alia*, Cox's "'Voice Manager' online subscriber profile management system." Ex. 2003, p. 2. The pleadings and corporate responsibility statements filed in the district court litigation admit that CoxCom, LLC is a wholly owned subsidiary of CCI, and further, that CoxCom, LLC is the parent, direct or indirect, of nearly all the Regional Cox Entities named in, and served with, the complaint. *See* Ex. 2004, pp. 3-11, and Ex. 2005 (collected Cox entity corporate disclosure statements from District Court Litigation, making carefully circumscribed admissions regarding a web of related company relationships). Four of those Regional Cox Entities, Cox Communications Georgia, LLC, Cox Georgia Telcom, LLC, Cox Communications Las Vegas, Inc., and Cox Nevada Telcom, LLC, do not appear to have a direct relationship with CoxCom, LLC, but rather trace parentage through CCI. Ex. 2004, Ex. 2005 at 15-16, 33-34, 21-22, 49-50. Cox filings in the district court litigation further describe another unnamed entity, Cox Enterprises, Inc. as the "corporate parent" of CCI, CoxCom, LLC and the Regional Cox Entities. Ex. 2004 at 2, Ex. 2005.

Figure 1 (also attached as Exhibit 2006) graphically depicts the relationships that defendants CCI, CoxCom, LLC, and the Regional Cox Entities have already admitted in the District Court Litigation.

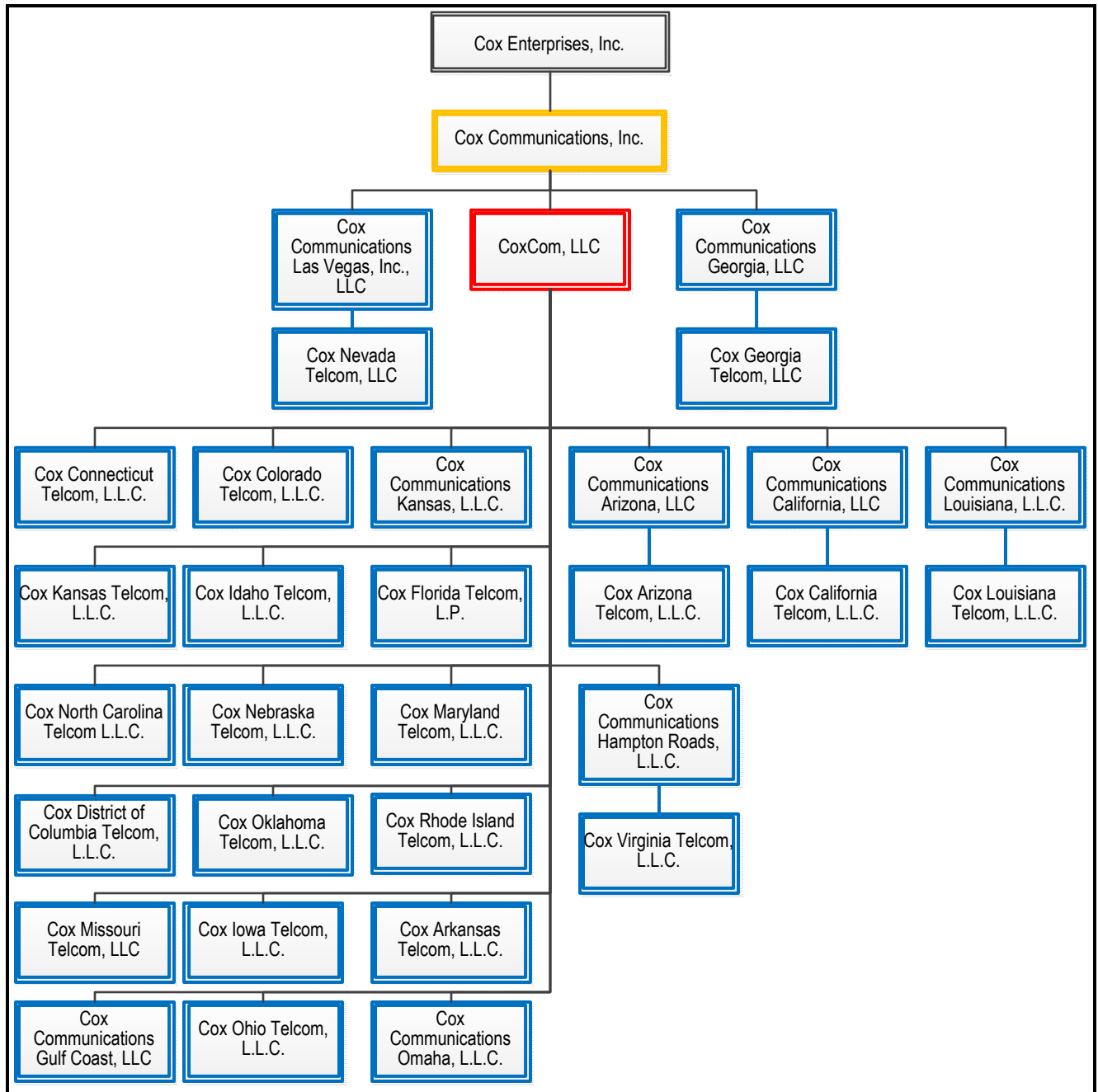


Exhibit 2006

Whether these privately-held entities operate as separate and distinct entities, or effectively operate as a single entity remains unclear. A draft stipulation, for filing in the District Court Litigation, offered by Petitioner's counsel (and included as an Exhibit, *see* Ex. 2007, p. 2), indicates that some level of operational control is

vested in the CoxCom, LLC entity (outlined in red, above), suggesting CCI is no more than a holding company providing no goods or services. Indeed, state-by-state or locality-by-locality licensure or franchising of the Regional Cox Entities (outlined in blue, above), suggests that it is these entities that are actually authorized to offer the products and services that are accused. Consistent with the implications of that proposed stipulation, in sworn statements filed in other litigation against CCI, CoxCom, LLC, and certain Regional Cox Entities, a CCI Vice President represented that “CCI has never provided, designed, manufactured, advertised, promoted, offered, or sold broadband or packet-based telephone products or services...” Ex. 2003, p. 6, *quoting* Ex. 2008, ¶ 4. Whatever the true nature of intercompany relationships and operations, neither CoxCom, LLC, nor any of the Regional Cox Entities is identified by Petitioner as a real party-in-interest. Rather, the Petition names CCI as the sole real party-in-interest. For at least the reasons detailed below, either or both the Regional Cox Entities and CoxCom, LLC should have been named as real parties-in-interest, and the Petition is incomplete for failing to name these parties.

A. Regional Cox Entities

The Board has repeatedly emphasized that determination of a real party in interest is a highly fact-dependent question that is based on a totality of the circumstances. *Askeladden LLC v. McGhie*, Case No. IPR2015-00122, slip op at

7-8 (PTAB March 6, 2015) (Paper 30) (citing *Gonzalez v. Banco Cent. Corp.*, 27 F.3d 751, 759 (internal citation omitted) (1st Cir. 1994)). In this regard, a particularly relevant feature of the cable telecommunications industry is that, to serve a particular geographic area (e.g., a state or locality), service providers are typically licensed, franchised or otherwise authorized in that particular geographic area. *See, e.g.*, Ex. 2009, p. 6. Thus, cable telecommunication service providers may be organized with multiple regional entities licensed to operate in their specific and respective geographic areas. The regional operating companies may, in turn, be owned and/or controlled by parent companies. These parent companies do not actually deliver service to customers, but may provide back-office support for the regional entities or serve other purposes common to the regional entities.

Although precise contours of the intercompany relationships and operations of the various *privately-held* Cox entities are somewhat opaque, litigation filings provide a glimpse into relationships and operations that are consistent with the foregoing regional operating company model. CCI owns CoxCom, LLC, which in turn owns all but four Regional Cox Entities (those four Regional Cox Entities are owned directly or indirectly by CCI). The Regional Cox Entities each have a principal place of business in the specific and respective geographic area that they serve. Ex. 2010, p. 2, fn. 2. CCI provides “accounting, legal support, and so on” to the Regional Cox Entities, while the Regional Cox Entities “independently

purchase and maintain their own equipment” and “manage the marketing and sale of their products.” Ex. 2003, p. 4, *quoting* Ex. 2011, p. 6. Moreover, the Regional Cox Entities “deal with customers, ***provide goods and services***, and receive revenues.” Ex. 2003, p. 6, *quoting* Ex. 2008, ¶ 6. Regional Cox Entities sell and install the accused products to customers and support the accused products and services. Ex. 2003, p. 12. CCI itself does not deliver any services to the consumer because it is not licensed to do so. Ex. 2003, p. 6 *citing* Ex. 2011, p. 5.⁴

Accordingly, as the Regional Cox Entities provide the goods and services that may infringe the '714 Patent (among others), the parties responsible for any infringement of the '714 Patent are the Regional Cox Entities themselves, not CCI. Indeed, claim 1 of the '714 Patent recites a “communications service subscribed to by a subscriber,” and CCI has admitted that “[c]ommunications services are provided only by those Cox entities licensed to do so.” Ex. 2003, p. 6 *citing* Ex. 2012, pp. 16-17, *see also* Ex. 2011, p. 4. Moreover, CCI apparently “does not engage in, directly or indirectly, the provision of telephony services or technology.” Ex. 2012, p. 3. Thus, the Regional Cox Entities have a direct interest in a trial as to validity of claims of the '714 Patent. As CCI provides legal support to the Regional Cox Entities, those entities would have looked to CCI to file the

⁴ Indeed, filings in other litigations suggest that CCI does not make, offer for sale, or otherwise provide any goods or services of any kind. Ex. 2013, p. 1.

instant *inter partes* review petition. CCI has not filed the instant Petition of its own accord: it does not itself have subscribers, and does not itself provide telephony services. Rather, CCI has filed the instant Petition as a surrogate, representing the interests, and at the behest, of the Regional Cox Entities. For at least this reason, the Regional Cox Entities should have been named as real parties-in-interest, according to the Trial Practice Guide. Trial Practice Guide, 77 Fed. Reg. 48756, 48759 (Aug. 14, 2012); *see also RPX Corp. v. VirnetX, Inc.*, Case No. IPR2014-00171, slip op. at 9 (PTAB June 5, 2014) (Paper 49) (finding an unnamed client to be real party-in-interest where petitioner was a “nominal plaintiff” with “no substantial interest” in the *inter partes* review apart from those of its client).

B. CoxCom, LLC

CoxCom, LLC should also have been named as a real party-in-interest.

As part of a draft stipulation and agreement between CoxCom, LLC and Patent Owner offered by Cox counsel on July 21, 2015 as a signature-ready stipulation to facilitate dismissal of the Regional Cox Entities and indeed, the Petitioner in this proceeding, CCI, from the District Court Litigation, CoxCom, LLC purported to represent to Patent Owner that it “directs” certain actions taken by CCI and the Regional Cox Entities. Ex. 2007, pp. 1, 3.

The named Petitioner in the instant proceeding, however, is CCI, which, according to litigation filings, is the parent company of CoxCom, LLC. Ex. 2004,

p. 3. Both companies are subsidiaries of a “corporate parent,” Cox Enterprises, Inc. Most of the Regional Cox Entities are subsidiaries of CoxCom, LLC. Ex. 2004, p. 2. Note again that the Cox entity companies are privately held, and thus there is little publicly available information about the organizational structure; however, FIG. 1, *supra* at 13, summarizes Patent Owner’s present understanding of Cox entity admissions to date.

According to the Trial Practice Guide, the real party-in-interest “is the party that desires review of the patent. Thus, the ‘real party-in-interest’ may be the petitioner itself, and/or it may be the party or parties at whose behest the petition has been filed.” 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012). The inquiry behind the real party-in-interest is a “highly fact-dependent question” focusing on the party’s relationship to the *inter partes* review pending before the Board. *Id.* Specifically, the inquiry focuses on “the degree of control the party can exert over the proceeding”: “[i]f a nonparty can influence a petitioner’s actions in a proceeding before the Board, to the degree that would be expected from a formal copetitioner, that nonparty should be considered [a real party-in-interest] to the proceeding.” *See Aruze Gaming Macau Ltd. v. MGT Gaming Inc.*, Case IPR2014-01288, slip op. at 11 (PTAB Feb. 20, 2015) (Paper 13). Furthermore, “[t]he concept of control generally means that it should be enough that the nonparty has the actual measure of ***control or opportunity to control***” Trial Practice

Guide at 48759 (citing WRIGHT & MILLER § 4451). “[A] party that funds and directs and controls an IPR or PGR petition or proceeding constitutes a ‘real party-in-interest’.” Trial Practice Guide at 48760.

By virtue of the relationship between the parties and draft stipulations in litigation, and other circumstantial evidence, it is clear that CoxCom, LLC either controlled the actions of CCI or has the ability to do so. As detailed above, in the District Court Litigation, CoxCom, LLC agreed that it at least “directs the actions taken by” CCI and the Regional Cox Entities that “result in patent infringement liability”. Ex. 2007, p. 3. Further, CoxCom, LLC, CCI, and the Regional Cox Entities share the same counsel. Ex. 2007, pp. 4-5. Consistent with the draft stipulation, but in prior litigation before the District of Kansas, CCI, CoxCom, LLC, and the Kansas Regional Cox Entity, Cox Kansas Telcom, LLC, have previously offered the sworn statement of a CCI vice president, who confirmed that CoxCom, LLC “has the right to control” companies below it. Ex. 2003, *citing* Ex. 2011, p. 6. Furthermore, like the instant draft stipulation, in at least two other (unrelated) litigations, CCI has sought, and stipulated to, the substitution of CoxCom, LLC in its place, such that CoxCom, LLC is the defendant in the litigation, and CCI is dismissed from the litigation. Exs. 2013-2014.

This Board has previously found that “[w]hen the intertwined nature of two corporations demonstrates that ‘it is difficult for both insiders and outsiders to

determine precisely where one ends and the other begins, there exists an actual measure of control or opportunity to control.’” *Reflectix, Inc. v. Promethean Insulation Technology LLC*, Case IPR2015-00039, slip op. at 11 (PTAB April 24, 2015) (Paper 18). Thus, the Board may consider whether Petitioner has “blurred sufficiently the lines of corporate separation with [an unnamed related entity], such that [the entity] could have controlled the filing and participation of the IPRs.” *Zoll Lifecor Corp. v. Philips Elec. N. Am. Corp.*, Case IPR2013-00606, slip op. at 10 (PTAB Mar. 20, 2014) (Paper 13); see also *Galderma S.A. v. Allergan Industrie, SAS*, Case IPR2014-01422, slip op. at 12 (PTAB Mar. 5, 2015) (Paper 14) and *Aruze Gaming Macau* at 18.

Blurring the lines and supporting the fact that CoxCom, LLC should have been named as a real-party-in-interest are the party's activities and representations in other PTAB proceedings. CoxCom, LLC was recently petitioner in six unrelated petitions for *inter partes* review filed June 23 and 24, 2015 (IPR2015-01477 et al.); CCI was not named in any of the petitions. *See, e.g.*, Ex. 2015, p. 2 (IPR2015-01477, Petition). However, the in-house counsel signatory on the power of attorney for CoxCom, LLC in IPR2015-01477 (Stephanie Allen-Wang) is the **same** in-house counsel signatory on the power of attorney for CCI in the instant *inter partes* review petition. Ex. 2016, p. 5; IPR2015-01227, Paper 1. In the instant proceeding, Ms. Allen-Wang asserts authority to execute the document on

behalf of CCI, while in IPR2015-01477, she signed the document in her authority as “Senior IP Counsel” of CoxCom, LLC. *Id.*

In other Petitions filed August 18, 2015 that explicitly acknowledge CoxCom, LLC's relation to CCI as a wholly-owned subsidiary, CoxCom, LLC is named as Petitioner and as the real party-in-interest. *See* Ex. 2017, p. 1 (IPR2015-01760, Petition); *see also* IPR2015-01762, IPR2015-01765. Notably, those petitions concern the exact same patents as the petitions filed June 24, 2015 (e.g., IPR2015-01482 *et al.*), in which CoxCom, LLC was named as petitioner, but which fail to mention any corporate relationship with CCI.

In another recently-filed Petition, ***both*** CCI and CoxCom, LLC were named as real parties-in-interest. *See* Ex. 2018, p. 2 (IPR2015-01796, Petition). Only CCI was named as a defendant in the litigation related to that *inter partes* review Petition, but allegedly infringing activities include “telephone, internet, and/or television services” provided through cable systems. Ex. 2019, p. 4. It is unclear why CoxCom, LLC was named as real party-in-interest along with CCI in IPR2015-01796, but not here, where similar products and activities are alleged to fall within the scope of the '714 Patent in the District Court Litigation.

A summary of pending *inter partes* review petitions naming Cox entities as petitioner is attached as Exhibit 2020, and shown below. The instant proceeding is highlighted.

Parties and Roles as Represented to the PTAB by Cox			
Case Number	Filed	Cox Communications, Inc.	CoxCom, LLC
IPR2015-01187	5/11/2015	Petitioner	
IPR2015-01227	5/19/2015	Petitioner	
IPR2015-01273	5/27/2015	Petitioner	
IPR2015-01477	6/23/2015		Petitioner
IPR2015-01478	6/23/2015		Petitioner
IPR2015-01482	6/24/2015		Petitioner
IPR2015-01484	6/24/2015		Petitioner
IPR2015-01485	6/24/2015		Petitioner
IPR2015-01486	6/24/2015		Petitioner
IPR2015-01536	7/2/2015	Petitioner	
IPR2015-01760	8/18/2015		Petitioner*
IPR2015-01762	8/18/2015		Petitioner*
IPR2015-01765	8/18/2015		Petitioner*
IPR2015-01796	8/24/2015	Petitioner	Real Party-in-Interest

*These Petitions identify CoxCom, LLC as Petitioner and as the real party-in-interest, together with an acknowledgment that CoxCom, LLC is a wholly owned subsidiary of Cox Communications, Inc.

Exhibit 2020

As evident from Exhibit 2020, which summarizes the public record of proceedings in which a Cox entity has petitioned for *inter partes* review, in nine out of the fourteen petitions for *inter partes* review in which a Cox entity is a petitioner, that Cox entity petitioner is **CoxCom, LLC**. Four petitions name only CCI as petitioner; all four of those proceedings (including the present proceeding) are related to the District Court Litigation between AT&T entities and CCI. In the sole other petition naming CCI as petitioner (IPR2015-01796, discussed above),

CoxCom, LLC is *also* named as a real party-in-interest. Other than keeping its AT&T-facing story straight, it is unclear why CoxCom, LLC is not identified as a real party-in-interest in the instant proceeding.

Further evidencing the blurring of lines is the overlap in corporate leadership. CoxCom, LLC and CCI share certain executives; for example, Patrick Esser, Mark Bowser, and Stephanie Allen-Wang each serve leadership roles in CCI, CoxCom, LLC, and at least one of the Regional Cox Entities. Ex. 2021, pp. 24, 47, 64; Ex. 2022, p. 1. As noted above, and as confirmed by sworn statements, Ms. Allen-Wang serves as Intellectual Property counsel for CCI, CoxCom, LLC, and the Regional Cox Entities. Ex. 2022, p. 1. A short summary of other executive leadership overlap is displayed below and also found in Exhibit 2023, sourced from public Dun & Bradstreet reports⁵.

The shared corporate leadership and intertwined nature of the two companies thus suggests CoxCom, LLC possesses an actual measure of control or opportunity to control the instant *inter partes* review. *See Galderma S.A.*, citing

⁵ Again, these facts are sourced from what little information can be gleaned from publicly available sources – as the Cox entity companies are private, there is minimal visibility into corporate leadership. Patent Owner has noticed, or will be noticing, 30(b)(6) depositions in the District Court Litigation in an effort to obtain additional facts.

Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc., Case IPR2013-00453,
slip op. at 2-6 (PTAB Jan. 6, 2015) (Paper 88).

Cox Entity Leadership Overlap			
	Patrick Esser	Stephanie Allen-Wang	Mark Bowser
Cox Communications, Inc. (CCI)	President CEO	IP Counsel	Executive VP CFO
CoxCom, LLC	President	Senior IP Counsel	Executive VP
Cox Communication Georgia, LLC	President	IP Counsel	President
Cox Communications Las Vegas, Inc.	President CEO	IP Counsel	CFO
Cox Arizona Telcom, L.L.C.	President	IP Counsel	CFO
Cox Communications California, LLC	Member	IP Counsel	Member
Cox Florida Telcom, L.P.	?	IP Counsel	CFO
Cox Georgia Telcom, LLC	Principal	IP Counsel	Officer (unknown capacity)
Cox Communications Kansas, L.L.C.	President	IP Counsel	CFO
Cox Communications Louisiana, L.L.C.	Member	IP Counsel	?
Cox Communications Omaha, L.L.C.	Member	IP Counsel	Member
Cox Nevada Telcom, L.L.C.	President, CEO	IP Counsel	CFO
Other Regional Cox Entities	?	IP Counsel	?

Exhibit 2023

Furthermore, consistent with the dismissals CCI and CoxCom, LLC have sought by way of draft stipulations, as the resulting sole defendant in the District Court Litigation, CoxCom, LLC, not CCI, would be interested in a trial on validity of the '714 Patent. In such a case, with such dismissals in mind, CoxCom, LLC, like the Regional Cox Entities, would want the instant petition to be filed on its behest. As noted above, CCI apparently “does not engage in, directly or indirectly, the provision of telephony services or technology.” Ex. 2012, p. 3. Rather, in other litigation, Cox has admitted that CoxCom, LLC “supplies certain of the Cox Entities with the technology used by those entities in providing telephony products and services...” Ex. 2012, p. 3.

Although the real party-in-interest inquiry focuses on the relationship between the party and the proceeding, and not the relationship between parties, here, the intraparty relationship bears on whether CoxCom, LLC “can influence [CCI’s] actions” in this proceeding before the Board. According to the Supreme Court, “[a] parent and its wholly owned subsidiary have a complete unity of interest...the subsidiary acts for the benefit of the parent, its sole shareholder.” *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 771-72 (1984). Further, the inquiry as to control or participation “must consider the totality of the circumstances” and the evidence as a whole: the Board is not precluded from finding control by a non-party based on circumstantial evidence. *Askeladden* at 7-

8. Thus, CoxCom, LLC actions taken for the benefit of its parent, CCI, suggest an opportunity to control such that CoxCom, LLC should have been named as a real party-in-interest. For at least these reasons, CoxCom, LLC should have been named as an additional real party-in-interest.

C. Conclusion

The burden is with Petitioner CCI to comply with the statutory requirement to name all real parties-in-interest. Based on the above, Petitioner did not do so because it neglected to name the Regional Cox Entities and/or CoxCom, LLC, at least one of which should have been named as real party-in-interest for the reasons detailed above. Because Petitioner failed to include either of these parties in its identification of real parties-in-interest, the Petition is incomplete, and the Board should vacate the Petition's filing date. 37 C.F.R. § 42.106(b). Correcting the filing date at this juncture would be futile; Petitioner and, indeed, its unnamed real parties-in-interest were served with a complaint alleging infringement of the '714 Patent over one year ago, and thus, if a new filing date were accorded, the Petition would be barred under 35 U.S.C. § 315(b).

IV. Claim Construction

In an *inter partes* review, claim terms of an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Technologies*,

LLC, No. 2014-1301, 2015 WL 4097949, at *7–*8 (Fed. Cir. July 8, 2015); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1321 (Fed. Cir. 2005) (*en banc*)). Claims are to be given their broadest reasonable interpretation consistent with the specification, and the claim language should be read in light of the specification, as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Words of the claim are therefore given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). An inventor is entitled to be his or her own lexicographer of patent claim terms by providing a definition of the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

For purposes of these proceedings, all terms should be given their broadest reasonable construction in light of the specification. Nonetheless, and for avoidance of doubt, Patent Owner reserves the right to argue different constructions in forums in which the broadest reasonable construction standard does not apply.

A. The Preamble of Claim 1 Should Be Afforded Patentable Weight

Claim 1's preamble recites "[a] method for managing, by a profile management system, subscriber profile data associated with a communications service subscribed to by a subscriber, the subscriber profile data being stored on a

communications network which executes the communications service in accordance with the subscriber profile data, the method comprising...”

If a preamble “recites limitations of the claim,” it should be construed as if in the balance of the claim. *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed.Cir.2002), *quoting Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed.Cir.1999). Similarly, if a preamble provides antecedent basis for claim terms in the body, the preamble may be limiting. *Eaton Corp. v. Rockwell Int'l Corp.*, 323 F.3d 1332, 1339 (Fed. Cir. 2003).

Here, the preamble of claim 1 both recites limitations of the claim and provides antecedent basis for claim terms in the body. In particular, the preamble recites that the “subscriber profile data” is “stored on a communications network which executes the communications service in accordance with the subscriber profile data.” This is more than a “purpose or intended use of the invention.” *Pitney Bowes*, 182 F.3d at 1305. For example, the claim does not simply recite a method for storing subscriber profile data on a communications network, nor is this language “duplicative of the limitations in the body of the claim,” as claim 1 does not include this language anywhere else. *Am. Med. Sys., Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1359 (Fed. Cir. 2010). Rather, the preamble offers a distinct requirement for the claimed invention and the recited subscriber profile data, that the subscriber profile data is stored on a communications network which executes

a communications service in accordance with the subscriber profile data. Thus, this language should be construed as limiting, and treated as if in the body of the claim.

Second, the term “subscriber profile data” provides antecedent basis for claim terms in the body of the claim. Element [1b] (as annotated by Petitioner) recites “receiving a subscriber request to view *the subscriber profile data*”; the only antecedent for the “subscriber profile data” is in element [1a], the preamble.

Petitioner does not contend whether the preamble is limiting or not; it has offered no arguments or positions as to claim construction at all. Accordingly, Patent Owner's construction should be adopted, and these portions of the preamble of claim 1 should be accorded patentable weight under the broadest reasonable interpretation⁶.

B. The Petition Should Be Dismissed Because Petitioner Failed to Comply With 37 C.F.R. § 42.104(b)(3)

Rule 42.104(b)(3) requires a petition to set forth “[h]ow the challenged claim is to be construed.” 37 C.F.R. § 42.104(b)(3). The Petition here fails to provide *any proposed construction* (explicit or implicit) as to *any claim term*. Nor

⁶ Only portions of the preamble which recite limitations or provide antecedent basis are properly construed as limiting, other portions need not be construed as a limitation. *TomTom, Inc. v. Adolph*, 790 F.3d 1315, 1323 (Fed. Cir. 2015)

does the Petition even provide the bare minimum “simple statement that the claim terms are to be given their broadest reasonable interpretation” as instructed by the Office Patent Trial Practice Guide. 77 Fed. Reg. 157 at 48764 (Aug. 14, 2012). Accordingly, as the Petition does not comply with Rule 42.104(b)(3), the **Petition is deficient** and trial cannot be instituted. Furthermore, because Petitioner fails to set forth any claim construction, the Petition is deficient for failing to set forth “[h]ow the **construed claim** is unpatentable.” 37 C.F.R. § 42.104(b)(4) (emphasis added). Thus, for these additional reasons, trial cannot be instituted on this Petition.

V. No Proposed Ground of Unpatentability Shows a Reasonable Likelihood of Prevailing.

Patent Owner submits that no ground of unpatentability advanced by Petitioner provides the basis necessary for institution of *inter partes* review. The proposed grounds of unpatentability each fail to show that the references cited disclose each and every feature of independent claims 1 and 13, the independent claims of the '714 Patent, from which all other challenged claims depend. For anticipation grounds, argument, evidence and/or positions are entirely missing for element [1a] of claim 1 and element [13d] of claim 13. For avoidance of doubt, the limitations of element [13d] are recited in the body of claim 13, and correspond to those limitations recited in the preamble (element [1a]) of claim 1. Thus, when Petitioner, in proposing its rejection of claim 13, simply refers to its claim 1

“proofs” of element [1a] (which are nonexistent) for element [13d], its proofs for claim 13 necessarily also fail. Likewise, for obviousness grounds, argument, evidence, and/or positions are missing for limitations of dependent claims, and reasons to combine the references are wholly conclusory and deficient.

Accordingly, neither anticipation, nor obviousness of claim 1 or 13 (or any of the other challenged dependent claims) has been shown by Petitioner. As a result, no ground (or “proposed rejection”) shows a reasonable likelihood of prevailing. We now address, in turn and in detail, each of the proposed rejections advanced by Petitioner.

A. Because *Blumhardt* Does Not Disclose the Features of the Independent Claims, Proposed Rejections A(1)-A(4) Do Not Show a Reasonable Likelihood of Prevailing.

Petitioner alleges the *Blumhardt* reference, U.S. Patent No. 5,629,978, anticipates claims 1-5, 7, 13-15, 17, and 22 (proposed rejection A(1)), and further alleges combinations with *Boulware*, *Bayless*, and *Beck* for certain claims depending from independent claims 1 and 13 as proposed rejections A(2)-A(4). Petition at 20-30. However, for at least the following reasons, Petitioner has failed to show that *Blumhardt* explicitly discloses each and every feature of the claims, recited as in the claims. Nor has Petitioner shown that any of the obviousness combinations teach or suggest each and every feature of the claims. Accordingly, trial should not be instituted on any of proposed rejections A(1)-A(4).

1. Proposed Rejection A(1) Should Not Be Adopted Because *Blumhardt* Does Not Disclose the Features of the Independent Claims

Petitioner's proposed rejection A(1) alleges anticipation by *Blumhardt* of independent claims 1 and 13, and certain claims dependent thereon. However, for at least the following reasons, *Blumhardt* does not anticipate claims 1 and 13 and their dependent claims, and accordingly, trial cannot be instituted on this proposed rejection.

a) The Petition Fails to Show Disclosure of Element [1a]

As summarized above in the claim construction section, the features of the preamble should be construed as limitations. Specifically, and properly construed, claim 1 dictates that the nature of the “subscriber profile data” and “the communications network” (two terms used throughout the body of claim 1) is that the “subscriber profile data [is] stored on a communications network which executes the communications service in accordance with the subscriber profile data.” However, Petitioner provides no citation, argument, or other evidence to show that *Blumhardt* discloses these features of the preamble of claim 1 (referred to as element [1a]). Indeed, Table A is blank in the cell adjacent to the recitation of element [1a]. Petition at 23-24. Nor does Petitioner's summary of *Blumhardt* provide any evidence to show that *Blumhardt*'s communications network “executes the communications service in accordance with the subscriber profile

data” as recited. Petition at 10-12. The Petition is similarly devoid of any showing that the “subscriber profile data” is “stored on a communications network” as recited.

The Board should not fill in these gaps in Petitioner’s assertions – it is the Petitioner’s responsibility “to explain specific evidence that support its arguments, not the Board’s responsibility to search the record and piece together what may support Petitioner’s arguments.” *Dominion Dealer Solutions, LLC v. Autoalert, Inc.*, Case IPR2013-00225, slip op. at 4 (PTAB Oct. 10, 2013) (Paper 15). Accordingly, as Petitioner has failed to put forth any evidence as to element [1a], the Petitioner cannot show *Blumhardt* renders claim 1 unpatentable by the statutorily mandated “preponderance of the evidence,” and there is no reasonable likelihood that Petitioner will prevail in showing *Blumhardt* anticipates claim 1 or the claims which depend from claim 1. Proposed rejection A(1) should not be adopted as to claims 1-5 and 7.

b) The Petition Fails to Show Disclosure of Element [13d]

Element [13d] recites, *inter alia*, “wherein the communications network executes the communications service in accordance with the updated subscriber profile data.” Similar language is recited in element [1a] of claim 1, addressed in the preceding subsection. However, as the alleged evidence that *Blumhardt* anticipates this feature, Petitioner points only to elements [1e] and [1f] of claim 1,

neither of which actually recites this claim language. Instead, it is the preamble, element [1a] of claim 1, that includes an analogous recitation. Accordingly, there is no evidence to support the contention that *Blumhardt* discloses these claim features. Indeed, as detailed in the preceding section, Petitioner has not identified any disclosure in *Blumhardt* of any of the language of element [1a]. For example, relative to claim 13 as well as claim 1, no disclosure in *Blumhardt* is identified for a communications network which “executes the communications service in accordance with the subscriber profile data.” Thus, for reasons similar to those described above, Petitioner has failed to provide a preponderance of evidence to show that *Blumhardt* discloses each and every feature of claim 13 or the claims which depend thereon. Accordingly, *Blumhardt* cannot anticipate the claims, and proposed rejection A(1) should not be adopted as to claims 13-15, 17, and 22.

2. Proposed Rejections A(2)-A(4) Do Not Show a Prima Facie Case of Obviousness

Petitioner alleges various obviousness combinations for the dependent claims, all of which depend from independent claims 1 or 13. However, Petitioner fails to demonstrate how any of the proposed secondary references remedy the deficiencies of *Blumhardt*, which, as addressed above, has not been shown to disclose the features of elements [1a] and [13d]. Accordingly, because no combination teaches the features of the challenged claims, each of proposed rejections A(2)-A(4) fails to show a reasonable likelihood of prevailing. No *prima*

facie case of obviousness has been made, and therefore trial should not be instituted on these proposed grounds. Each proposed rejection is addressed in turn below.

a) Proposed Rejection A(2)

Petitioner alleges claims 8-9 (which depend from claim 1) and claims 18-19 (which depend from claim 13) are obvious over *Blumhardt* in view of *Boulware*. However, Petitioner's alleged reasons to combine *Blumhardt* and *Boulware* are merely conclusory and cannot establish the requisite reasonable likelihood of prevailing. Petitioner alleges only that one of ordinary skill in the art would have incorporated teachings of *Boulware* into *Blumhardt* "to yield a predictable improvement of available services." Petition at 21. But Petitioner offers no objective evidence of the "predictable improvement," nor does Dr. Mir supply any such evidence; he merely parrots Petitioner's conclusion (or vice versa). Ex. 1014, ¶ 67. Petitioner provides no citation to *Boulware*, *Blumhardt*, or any other evidence to support its position; such conclusory reasoning is inappropriate and inadequate to show obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Thus, for at least this reason, the combination of *Blumhardt* and *Boulware* does not show a *prima facie* case of obviousness of claims 8-9 and 18-19, and trial cannot be instituted on this proposed ground.

The combination of *Blumhardt* and *Boulware* additionally fails to substantively teach or suggest the features of claims 8-9 and 18-19. Claims 8 and 18 recite, *inter alia*, “wherein the subscriber profile data comprises...authorized telephone numbers.” Petitioner cites a portion of *Blumhardt* which discusses a “reject these calls” icon, but such disclosure would, at best, only describe ***unauthorized*** telephone numbers. Petition at 26, *citing* Ex. 1003, 9:38-41. Petitioner cites no portion of *Blumhardt* as teaching ***authorized*** telephone numbers, and thus, Petitioner has failed to show how claims 8 and 18 are rendered obvious by *Blumhardt* and *Boulware*. Claims 9 and 19 depend from claims 8 and 18, and are therefore also not rendered obvious by the alleged combination. Thus, for at least this further reason, the combination of *Blumhardt* and *Boulware* does not show a *prima facie* case of obviousness of claims 8-9 and 18-19, and trial cannot be instituted on proposed rejection A(2).

b) Proposed Rejection A(3)

Similarly, Petitioner asserts that combining *Bayless* with *Blumhardt* to achieve the features of claim 10 would “yield a predictable improvement of available services” without any evidence to support the conclusion. Petition at 22. But “rejections on obviousness cannot be sustained with mere conclusory statements...” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006); *see also KSR*, 550 U.S. at 418. Accordingly, the combination of *Blumhardt* and *Bayless* does not

show a *prima facie* case of obviousness of claim 10, and trial cannot be instituted on proposed rejection A(3).

c) Proposed Rejection A(4)

Finally, as part of proposed rejection A(4), alleging obviousness of claims 14-15 and 21-22 over *Blumhardt* and *Beck*, Petitioner argues incorporation of *Beck*'s "SPACE system" would improve *Blumhardt* because the two references "have similar system architectures" and the incorporation of the system would "yield a predictable improvement." Petition at 22-23. Again, this statement is without support from any objective evidence, and Dr. Mir does not provide any reasoning to support the conclusion. Ex. 1014, ¶ 77. There is no evidence in the record supporting the contention that the "intermediate SPACE service management system" of *Beck* is a predictable improvement, much less an improvement at all. Indeed, to the extent the proposed combination can be understood, Petitioner essentially proposes modifying a system which has a "direct[] interface[]" between two networks (*Blumhardt*, see Ex. 1003, 4:64-66) to add a third "service management system" as an intermediary (as in *Beck*, see Ex. 1010, 4:25-43), without any reasoning to support the modification. Thus, the combination of *Blumhardt* and *Beck* does not provide a *prima facie* case of obviousness of claims 14-15 and 21-22, and trial cannot be instituted on proposed rejection A(4).

3. Conclusion – Trial Cannot Be Instituted on Proposed Rejections A(1)-A(4)

Because *Blumhardt* has not been shown to disclose each and every feature of claims 1 and 13, arranged as in the claims, *Blumhardt* does not anticipate the independent claims. Challenged dependent claims 2-10, 14-15, 17-19, and 21-22 all depend from claims 1 or 13, and are neither anticipated by *Blumhardt* nor rendered obvious by the *Blumhardt*-based combinations for at least the reasons set forth for claims 1 and 13, and further in view of their own respective features. Accordingly, trial cannot be instituted on Proposed Rejections A(1)-A(4) as to any claim.

B. *Buhrmann* Does Not Disclose the Features of Independent Claims 1 and 13, and Therefore Proposed Rejections B(1)-B(4) Do Not Show a Reasonable Likelihood of Prevailing.

Petitioner also alleges the *Buhrmann* reference, U.S. Patent No. 5,903,845, anticipates claims 1-7, 12-17, and 20, and renders obvious other challenged claims in combination with various other references. Petition at 31-40. However, for at least the following reasons, and for many of the same reasons detailed above with respect to *Blumhardt*, Petitioner has failed to show that *Buhrmann* explicitly discloses each and every feature of the claims, recited as in the claims, and accordingly, trial should not be instituted on proposed rejection B(1). None of the secondary references cure these deficiencies in *Buhrmann* as to the independent claims, and accordingly, trial should not be instituted on proposed rejections B(2)-

B(4) for at least these reasons, and further in light of additional failings of the Petition.

1. Proposed Rejection B(1) Should Not Be Adopted Because *Buhrmann* Does Not Disclose the Features of the Independent Claims

Petitioner's proposed rejection B(1) alleges anticipation by *Buhrmann* of independent claims 1 and 13, and certain claims dependent thereon. However, for at least the following reasons, *Buhrmann* does not anticipate claims 1 and 13 and their dependent claims, and accordingly, trial cannot be instituted on this proposed rejection.

a) The Petition Fails to Show Disclosure of Element [1a]

As with Table A and Proposed Rejection A(1) described above, Petitioner fails to identify in Table B any portion of *Buhrmann* or any other evidence to support disclosure of the features recited in the preamble of claim 1, element [1a], which should be afforded patentable weight under a proper claim construction. As detailed above, when properly construed, claim 1 specifies the nature of the "subscriber profile data" and "the communications network" (two terms used throughout the body of claim 1): the "subscriber profile data [is] stored on a communications network which executes the communications service in accordance with the subscriber profile data." Petitioner's summary of *Buhrmann* is similarly devoid of any evidence to show that *Buhrmann's* alleged

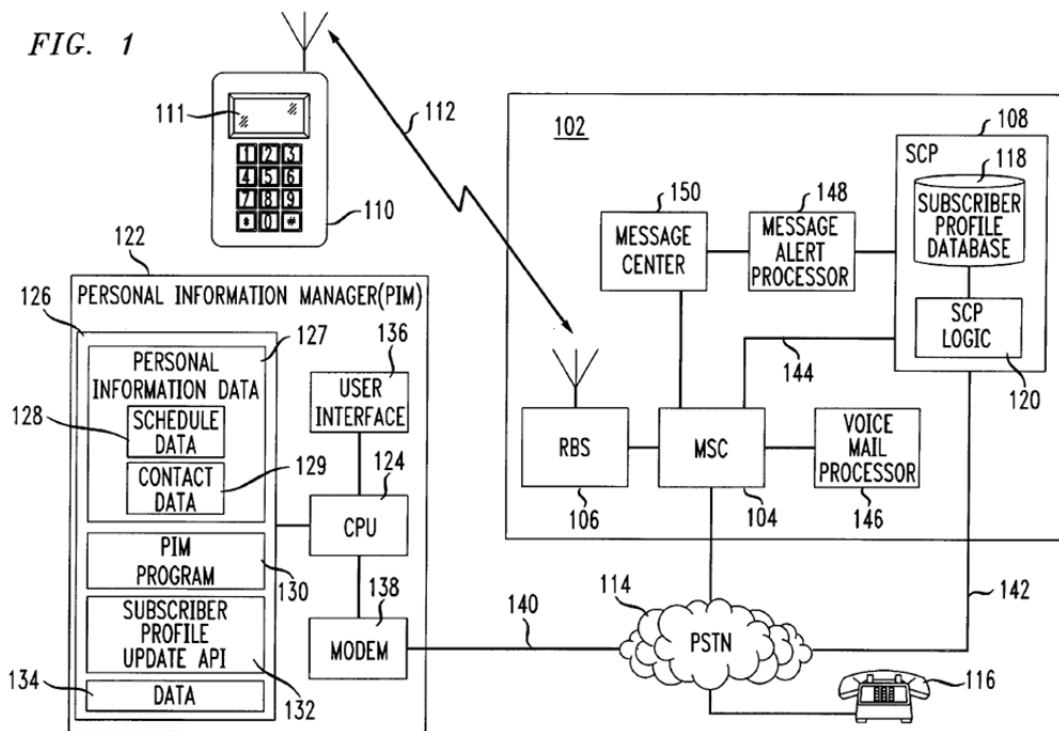
communications network “executes the communications service in accordance with the subscriber profile data” as recited. Petition at 12-15. Again, the Board should not fill in these gaps in Petitioner’s analysis, and any ambiguity in the analysis should be construed against Petitioner. *Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*, Case CBM-2012-00003, slip op. at 10 (PTAB Oct. 25, 2012) (Paper 8). Accordingly, for at least this reason, Proposed Rejection B(1) does not show a reasonable likelihood of prevailing as to claim 1, and trial cannot be instituted on this ground as to this claim and the challenged claims which depend therefrom.

b) The Petition Fails to Show Disclosure of Element [1c]

Element [1c] of claim 1 recites “retrieving the subscriber profile data *from the communications network...*” *Buhrmann* does not disclose this feature of claim 1, because *Buhrmann* never retrieves *any* data, much less subscriber profile data, from what Petitioner identifies as the “communications network,” or network 102⁷ of *Buhrmann*.

⁷ Petitioner never explicitly identifies what element of *Buhrmann* corresponds to the recited “communications network,” but alternately refers to subscriber profile database 118 and SCP 108, both of which are part of network 102. For ease of reference, Patent Owner refers to network 102, but the deficiencies of *Buhrmann* manifest regardless of which element is the “communications network.”

Buhrmann arguably describes its “subscriber profile data” as being stored in a “telecommunications system”. Ex. 1004, Abstract. Petitioner acknowledges this in its summary of *Buhrmann*, where it states that the PIM 122 “transmits the profile update data to a database in a telecommunications system which stores subscriber profile data.” Petition at 12. *Buhrmann* stores its “subscriber profile data” in the “subscriber profile database 118” of FIG. 1, reproduced below.



Ex. 1004, FIG. 1

However, *Buhrmann* does not disclose the retrieval of any information from that subscriber profile database 118, SCP 108, or any other portion of network 102. Petitioner asserts without citing to *Buhrmann* that “a subscriber’s profile data is

retrieved and forwarded to the subscriber upon request,” (*see* Petition at 12), but in reality, *Buhrmann* discloses no such thing.

As its only evidence in Table B for element [1c], Petitioner cites discussion of “user interface 136” of PIM 122 which “allows the subscriber...to view, enter and update ***personal information data 127***...,” (Ex. 1004, 7:18-21) but this user interface does not allow updating or viewing of any “subscriber profile data.” Nor does this quotation discuss retrieval of subscriber profile data, it only mentions updating of “personal information data.” Personal information data 127 is not, and indeed has not been shown by Petitioner to be, one and the same as subscriber profile data in subscriber profile database 118. Furthermore, the relied upon portion of *Buhrmann* does not even discuss “retrieving...***from the communications network***” as recited in the claim. Thus, the evidence presented in Table B at element [1c] cannot show disclosure of this feature of claim 1.

The only colorable evidence Petitioner provides to support alleged disclosure of “retrieving the subscriber profile data ***from the communications network***” appears in its summary of *Buhrmann*, where it alleges: “[t]he subscriber profile data is retrieved from the communications network (e.g., ‘modem 138’ of ‘PIM 122’ retrieves information from ‘service control point (SCP) 108 through the PSTN 114’) upon receiving the subscriber request from the client (e.g., ‘PIM 122’).” Petition at 13, *citing* Ex. 1004, 7:13-22. Petitioner’s selective quoting and

cobbling together of *Buhrmann*'s language for personal information data 127 (on the one hand) and subscriber profile database 118 (on the other) is telling: the actual quotations in *Buhrmann* do not support Petitioner's position.

Instead of being arranged as alleged, *Buhrmann* actually states: "modem 138 is used for *sending* information *from the PIM 122 to the SCP 108 through the PSTN 114.*" Ex. 1004, 7:13-22 (emphasis added). Thus, PIM 122 does not "retriev[e] the subscriber profile data *from the communications network*" using modem 138. Indeed, *Buhrmann* only describes the transmission of information *to* the SCP 108 (e.g., the sending of updates, etc.); the reference never describes retrieval *from* SCP 108 (whether by modem 138 or otherwise) of subscriber profile data. *Buhrmann* never discusses transmitting any information *from* the SCP 108 or subscriber profile database 118 to PIM 122, the alleged client.

Perhaps in an attempt to remedy this failing, Petitioner also identifies *Buhrmann*'s "schedule data" as the recited "subscriber profile data" in the summary as well, and perhaps identifies the "personal information data 127" as the "subscriber profile data" as well. However, as shown in FIG. 1 of *Buhrmann*, "schedule data" and "personal information data" in *Buhrmann* are stored on "PIM 122," and *Buhrmann* never states that this data is retrieved "from the communications network." Ex. 1004, FIG. 1.

Accordingly, because Petitioner has not shown retrieval of any information from a communications network, much less retrieval of subscriber profile data from a communications network, *Buhrmann* cannot be said to disclose “retrieving the subscriber profile data *from the communications network...*” and therefore cannot anticipate claim 1.

c) The Petition Fails to Show Disclosure of Element [13b]

Petitioner relies on its explanation and citation to *Buhrmann* in element [1b] of Table B to show that the reference allegedly discloses element [13b], which recites, *inter alia*, “receiving, *from a profile management system*, a subscriber request to view the subscriber profile data.” Petition at 37. However, Petitioner entirely fails to account for the differences in claim language between the two claims, and identifies no portion of *Buhrmann* as disclosing the receipt of a subscriber request “from a profile management system.” It is unclear what element or perhaps combination of elements Petitioner identifies as the “profile management system.” Thus, Petitioner has failed to show that *Buhrmann* discloses each and every feature of claim 13, and therefore *Buhrmann* cannot anticipate the claim.

d) The Petition Fails to Show Disclosure of Element [13d]

As with proposed rejection A(1), Petitioner refers back to elements [1e] and [1f] of Table B to allege *Buhrmann* discloses the features of element [13d].

Petition at 38. However, as shown above, element [13d] recites that “the communications network executes the communications service in accordance with the updated subscriber profile data,” which is not recited in elements [1e] and [1f], but rather, analogous language is recited in element [1a]. Petitioner again makes no showing that this feature is disclosed in *Buhrmann*. Accordingly, Petitioner has failed to show any portion of *Buhrmann* that discloses the entirety of element [13d] of claim 13, and accordingly, there is no reasonable likelihood of prevailing as to anticipation of claim 13 by *Buhrmann* or the claims which depend therefrom.

2. Proposed Rejections B(2)-B(4) Do Not Show a *Prima Facie* Case of Obviousness

Petitioner alleges various obviousness combinations for dependent claims, all of which depend from independent claims 1 and 13, using the same secondary references as Proposed Rejections A(2)-A(4). However, Petitioner fails to demonstrate how any of the proposed secondary references teach the features of elements [1a], [1c], [13b], and [13d], addressed above, features which have not been shown to be disclosed by *Buhrmann*. Accordingly, each of proposed rejections B(2)-B(4) fail to establish a reasonable likelihood of prevailing. As no

prima facie case of obviousness has been made, trial should not be instituted on these proposed grounds. Particular individual deficiencies of the proposed rejections are discussed in turn.

a) Proposed Rejection B(2)

Petitioner alleges claims 8-9 (which depend from claim 1) and claims 18-19 (which depend from claim 13) are obvious over *Buhrmann* in view of *Boulware*. However, Petitioner's alleged reasons to combine *Buhrmann* and *Boulware* are simply conclusory and, again, without merit. Petitioner only alleges that one of ordinary skill in the art would have incorporated teachings of *Boulware* into *Buhrmann* "to yield a predictable improvement of available services." Petition at 32. But again, Petitioner offers no objective evidence of the "predictable improvement," nor does Dr. Mir supply any such evidence; he merely parrots Petitioner's conclusion (or vice versa). Ex. 1014, ¶ 86. Petitioner provides no citation to *Boulware* or any other evidence to support its position; such conclusory reasoning is inappropriate and inadequate to show obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Further, Petitioner baldly asserts that the "SCP that *Boulware* uses for call screening is the same SCP that *Buhrmann* refers to as a subscriber profile database in the PSTN," citing only Dr. Mir's declaration, which again does no more than parrot the exact same language; the declaration provides no factual support to this conclusion, and the statement is little more than

unpersuasive attorney argument. Ex. 1014, ¶ 85. “Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.” 37 C.F.R. § 42.65(a). Thus, for at least these additional reasons, the combination of *Buhrmann* and *Boulware* does not show a *prima facie* case of obviousness of claims 8-9 and 18-19, and trial cannot be instituted on proposed rejection B(2).

b) Proposed Rejection B(3)

Similarly, Petitioner asserts that combining *Bayless* with *Buhrmann* (proposed rejection B(3)) to achieve the features of claim 10 would “yield a predictable improvement of available services” without any evidence to support the conclusion. Petition at 32. “[R]ejections on obviousness cannot be sustained with mere conclusory statements...” *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006); *see also KSR*, 550 U.S. at 418. Accordingly, the combination of *Buhrmann* and *Bayless* does not show a *prima facie* case of obviousness of claim 10, and trial cannot be instituted on proposed rejection B(3).

c) Proposed Rejection B(4)

Finally, as part of proposed rejection B(4), Petitioner argues incorporation of *Beck's* “SPACE system” would improve *Buhrmann* because the two references “have similar system architectures” and the incorporation of the system would “yield a predictable improvement.” Petition at 32-33, *citing* Ex. 1014, ¶ 96.

Again, this statement is without support from any objective evidence, and Dr. Mir does not provide any reasoning to support the conclusion. Thus, the combination of *Buhrmann* and *Beck* does not provide a *prima facie* case of obviousness of claims 14-15 and 21-22, and trial cannot be instituted on proposed rejection B(4).

3. Conclusion – Trial Cannot Be Instituted on Proposed Rejections B(1)-B(4)

Because *Buhrmann* has not been shown to disclose each and every feature of claims 1 and 13, arranged as in the claim, *Buhrmann* does not anticipate the independent claims. Challenged dependent claims 2-10, 12, and 14-22 all depend from claims 1 and 13, and are also not anticipated by *Buhrmann* nor rendered obvious by the *Buhrmann*-based combinations for at least the reasons set forth for claims 1 and 13, because Petitioner's reasons to combine are conclusory, and further in view of their own respective features. Accordingly, trial cannot be instituted on Proposed Rejections B(1)-B(4) as to any claim.

C. *An* Does Not Disclose the Features of Independent Claims 1 and 13, and Therefore Proposed Rejections C(1)-C(3) Do Not Show a Reasonable Likelihood of Prevailing.

Petitioner also alleges the *An* reference, U.S. Patent No. 6,031,904, anticipates claims 1-7, 11, and 13-17 and renders obvious other challenged claims in combination with various other references. Petition at 40-52. However, for at least the following reasons, and again for similar reasons detailed above with respect to Proposed Rejections A(1) and B(1), Petitioner has failed to show that *An*

explicitly discloses each and every feature of the independent claims, recited as in the claims. Accordingly, trial should not be instituted on proposed rejection C(1).

None of the secondary references cure these deficiencies in *An* as to the independent claims, and accordingly, trial should not be instituted on proposed rejections C(2)-C(3) for at least this reason, and further in light of additional failings of the Petition.

1. Proposed Rejection C(1) Should Not Be Adopted Because *An* Does Not Disclose the Features of the Independent Claims

Petitioner's proposed rejection C(1) alleges anticipation by *An* of independent claims 1 and 13, and certain claims dependent thereon. However, for at least the following reasons, *An* does not anticipate claims 1 and 13 and their dependent claims, and accordingly, trial cannot be instituted on this proposed rejection.

a) The Petition Fails to Show Disclosure of Element [1a]

As in Tables A and B and Proposed Rejections A(1) and B(1), Petitioner fails to identify in Table C any portion of *An* as allegedly disclosing the features recited in the preamble of claim 1, element [1a], which should be considered limiting under a proper, broadest reasonable, claim construction. As before, a proper construction of claim 1 details the nature of the "subscriber profile data" and "the communications network" (two terms used throughout the body of claim

1); in particular, the “subscriber profile data [is] stored on a communications network which executes the communications service in accordance with the subscriber profile data.” There is no identification of disclosure in *An* of, for example, “a communications network which executes the communications service in accordance with the subscriber profile data.” It is not the Board’s responsibility (nor Patent Owner’s) to “search the record” and “support Petitioner’s arguments” in an adjudicative proceeding – it is solely the Petitioner’s responsibility and burden, which it has failed to carry. *Mitsubishi Plastics*, IPR2014-00524, slip op. at 8; *Dominion Dealer Solutions*, IPR2013-00225, slip op. at 4. Accordingly, for at least this reason, Proposed Rejection C(1) does not show a reasonable likelihood of prevailing as to claim 1, or the claims which depend therefrom, and trial cannot be instituted on this ground.

b) The Petition Fails to Show Disclosure of Element [13d]

As with proposed rejection A(1), Petitioner refers back to elements [1e] and [1f] of Table C to allege disclosure by *An* of the features of element [13d]. However, as shown above, element [13d] recites that “the communications network executes the communications service in accordance with the updated subscriber profile data,” which is not recited in elements [1e] and [1f], but rather, analogous language is recited in element [1a]. Accordingly, Petitioner’s record

fails to show any portion of *An* which discloses this portion of element [13d] of claim 13.

Further, element [13d] recites “receiving an update for the subscriber profile data *from the profile management system*...” Elements [1e] and [1f] do not recite a “profile management system” as in claim 13. Thus, Petitioner has not shown any disclosure in *An* of receiving an update from a profile management system as recited, and for at least this additional reason, has not shown disclosure of element [13d] by *An*.

Accordingly, there is no reasonable likelihood of prevailing as to claim 13. For at least these reasons, Proposed Rejection C(1) should not be adopted as to claim 13 and the claims which depend therefrom.

2. Proposed Rejections C(2)-C(3) Do Not Show a *Prima Facie* Case of Obviousness

As with the previous allegedly anticipatory references, Petitioner alleges various obviousness combinations for dependent claims which depend from independent claims 1 and 13. However, Petitioner fails to demonstrate how any of the proposed secondary references teach the features of elements [1a] and [13d], addressed above, features which have not been shown to be disclosed by *An*. Accordingly, proposed rejections C(2)-C(3) do not show a reasonable likelihood of prevailing, because no combination of references teaches or suggests each and

every feature of the claims. Thus, as no *prima facie* case of obviousness has been made, trial cannot be instituted on these proposed grounds.

a) Proposed Rejection C(2)

Petitioner asserts that combining *Bayless* with *An* (proposed rejection C(2)) to achieve the features of claim 10 would “yield a predictable improvement of available services” without any evidence to support the conclusion. Petition at 41. Again, “rejections on obviousness cannot be sustained with mere conclusory statements...” *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006); *see also KSR*, 550 U.S. at 418. Petitioner and Dr. Mir provide no more than bare parroting from the MPEP to assert that the references should be combined. Petition at 40-41, Ex. 1014, ¶ 106. This is insufficient to prove a *prima facie* case of obviousness, and accordingly, the combination of *An* and *Bayless* cannot provide the basis for institution of trial.

b) Proposed Rejection C(3)

Similarly, as part of proposed rejection C(3), Petitioner argues incorporation of *Beck's* “SPACE system” would improve *An* because it “provides a similar system architecture as *Beck*” and the incorporation of the system would “yield a predictable improvement.” Petition at 42, *citing* Ex. 1014, ¶ 108. Again, this statement is without support from any objective evidence, and Dr. Mir does not provide any reasoning to support the conclusion. Indeed, it is difficult to conceive

of a reason why a person of ordinary skill in the art would add the “service management system” of *Beck* to *An*, which Petitioner acknowledges already has “service manager nodes.” Ex. 1005, 3:20-23. Such a modification would likely be entirely duplicative, and not a “predictable improvement” at all. Thus, the combination of *An* and *Beck* does not provide a *prima facie* case of obviousness of claims 14-15 and 21-22, and trial cannot be instituted on proposed rejection C(3).

3. Conclusion – Trial Cannot Be Instituted on Proposed Rejections C(1)-C(3)

Because *An* has not been shown to disclose each and every feature of claims 1 and 13, arranged as in the claim, *An* does not anticipate the independent claims. Challenged dependent claims 2-7, 10-11, 14-17, and 21-22 all depend from claims 1 and 13, and are also not anticipated by *An* nor rendered obvious by the *An*-based combinations for at least the reasons set forth for claims 1 and 13, because Petitioner's reasons to combine are nothing more than conclusory statements without evidentiary support, and further in view of their own respective features. Accordingly, trial cannot be instituted on Proposed Rejections C(1)-C(3) as to any claim.

D. *Elliott* Does Not Disclose the Features of Independent Claims 1 and 13, and Therefore Proposed Rejections C(1)-C(3) Do Not Show a Reasonable Likelihood of Prevailing.

Petitioner also alleges that the *Elliott* reference, U.S. Patent No. 6,335,927, anticipates claims 1-7, 13-17, and 22. However, for at least the following reasons,

and again for similar reasons as shown above with respect to Proposed Rejections A(1), B(1), and C(1), Petitioner has failed to show that *Elliott* explicitly discloses each and every feature of the independent claims, recited as in the claims, and accordingly, trial should not be instituted on proposed rejection D(1). None of the secondary references cure these deficiencies in *Elliott* as to the independent claims, and accordingly, trial should not be instituted on proposed rejections D(2)-D(3) for at least this reason, and further in light of additional failings of the Petition.

1. Proposed Rejection D(1) Should Not Be Adopted Because *Elliott* Does Not Disclose the Features of the Independent Claims

Petitioner's proposed rejection D(1) alleges anticipation by *Elliott* of independent claims 1 and 13 and of certain claims dependent thereon. However, for at least the following reasons, *Elliott* does not anticipate claims 1 and 13 and their dependent claims, and accordingly, trial cannot be instituted on this proposed rejection.

a) The Petition Fails to Show Disclosure of Element [1a]

As with the previous proposed rejections A(1), B(1), and C(1), Petitioner fails to identify in Table D any portion of *Elliott* as allegedly disclosing the features recited in the preamble of claim 1, element [1a], which should be considered a limitation under a proper claim construction. Specifically, as before, and as properly construed, claim 1 dictates that the nature of the "subscriber profile

data” and “the communications network” (two terms used throughout the body of claim 1) is that the “subscriber profile data [is] stored on a communications network which executes the communications service in accordance with the subscriber profile data.” Accordingly, for at least this reason, Proposed Rejection D(1) does not show a reasonable likelihood of prevailing as to claim 1, and trial cannot be instituted on this ground.

b) The Petition Fails to Show Disclosure of Element [1c]

Element [1c] recites “retrieving the subscriber profile data *from the communications network...*” Petitioner cites a short passage of Elliott that states the “User Account Directory accesses the individual account information of users.” Petition at 55. But it is unclear where the “User Account Directory” resides, and Petitioner makes no effort to provide evidence equating the “User Account Directory” with a “communications network,” or that it is part of a “communications network” as recited. Nor does *Elliott* provide any disclosure to support such a finding.

Further, element [1c] recites that the retrieval is “based upon receiving the subscriber request to view the subscriber profile data.” No indication is made that the retrieval is based on a request as recited. The cited portion of *Elliott* merely states that the “User Account Directory accesses” the account information, but no portion of *Elliott* supports that this accessing is in response to a request from a

user. Ex. 1007, 62:30-32. Accordingly, Petitioner has failed to show that *Elliott* discloses the features of element [1c], and accordingly, no reasonable likelihood of prevailing has been shown.

c) The Petition Fails to Show Disclosure of Element [1f]

It follows from Petitioner's and *Elliott*'s deficiency in showing "retrieving the subscriber profile data *from the communications network*..." that *Elliott* also cannot disclose "forwarding an update...*to the communications network*..." as recited in element [1f]. Petitioner again cites the "User Account Directory" accessing account information of users, but makes no mention of any "communications network" to which an update is forwarded. Accordingly, *Elliott* has not been shown to disclose element [1f], and for this additional reason, does not anticipate claim 1.

d) The Petition Fails to Show Disclosure of Element [13d]

As with the previous proposed rejections A(1), B(1), and C(1), Petitioner refers back to elements [1e] and [1f] of Table C to allege *Elliott* discloses the features of element [13d]. However, as shown above, element [13d] recites that "the communications network executes the communications service in accordance with the updated subscriber profile data," which is not recited in elements [1e] and [1f], but rather analogous features are recited in element [1a]. Accordingly, Petitioner has failed to show any portion of *Elliott* which discloses the entirety of

element [13d] of claim 13, and accordingly, there is no reasonable likelihood of prevailing as to claim 13.

2. Proposed Rejections D(2)-D(3) Do Not Show a *Prima Facie* Case of Obviousness

As with the previous allegedly anticipatory references, Petitioner alleges two obviousness combinations for certain claims which depend from independent claims 1 and 13. However, Petitioner fails to demonstrate how any of the proposed secondary references teach the features of elements [1a] and [13d], addressed above, features which have not been shown to be disclosed by *Elliott*. Accordingly, proposed rejections D(2)-D(3) do not show a reasonable likelihood of prevailing, as no *prima facie* case of obviousness has been made, and therefore trial should not be instituted on these proposed grounds.

a) Proposed Rejection D(2)

Petitioner asserts that combining *Bayless* with *Elliott* to achieve the features of claim 10 would “yield a predictable improvement of available services” without any evidence to support the conclusion. Again, “rejections on obviousness cannot be sustained with mere conclusory statements...” *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006); *see also KSR*, 550 U.S. at 418. Petitioner and Dr. Mir provide no more than bare parroting from the MPEP to assert that the references should be combined and that an improvement is predictable. This is insufficient to prove a

prima facie case of obviousness, and accordingly, the combination of *Elliott* and *Bayless* cannot provide the basis for institution of trial.

b) Proposed Rejection D(3)

Similarly, as part of proposed rejection D(3), Petitioner argues incorporation of *Beck*'s "SPACE system" would improve *Elliott* because Elliott "provides a similar system architecture as *Beck*" and the incorporation of the system would "yield a predictable improvement." Petition at 53-54, *citing* Ex. 1014, ¶ 122. Again, this statement is without support from any objective evidence, and Dr. Mir does not provide any reasoning to support the conclusion. Petitioner and Dr. Mir assert, with no support, that "the SCP system used in *Elliott* is the same as the one disclosed in *Beck*, as *Elliot* classifies the switching points (SPs) into SSP, STP, and SCP," but *Elliott*'s SCP is a "service control point," not a "switching point" as alleged. Ex. 1007, 68:6-8. Moreover, *Beck* does not describe an "SCP system," but rather only details an "ISCP" or "integrated service control point," which may not be the same as *Elliott*'s (perhaps non-integrated) "service control point." Ex. 1010, 1:65-66. Thus, the combination of *Elliott* and *Beck* does not provide a *prima facie* case of obviousness of claims 14-15 and 21-22, and trial cannot be instituted on this proposed ground.

3. Conclusion – Trial Cannot Be Instituted on Proposed Rejections D(1)-D(3)

Because *Elliott* has not been shown to disclose each and every feature of claims 1 and 13, arranged as in the claim, *Elliott* does not anticipate the independent claims. Challenged dependent claims 2-7, 10, 14-17, and 22 all depend from claims 1 and 13, and are also not anticipated by *Elliott* nor rendered obvious by the *Elliott*-based combinations for at least the reasons set forth for claims 1 and 13, and further in view of their own respective features. Accordingly, trial cannot be instituted on Proposed Rejections D(1)-D(3) as to any claim.

VI. Conclusion

Because no ground of unpatentability shows a reasonable likelihood of prevailing, institution of trial should be denied.

Respectfully submitted,

/David W. O'Brien/

David W. O'Brien
Registration No. 40,107
HAYNES AND BOONE, LLP

Dated: 2-September-2015

IPR2015-01227

Cox Communications, Inc.

v.

AT&T Intellectual Property I, L.P.

Patent Owner's Exhibit List

September 2, 2015

ATT-2001	Docket Report – AT&T Intellectual Property I, L.P. <i>et al.</i> v. Cox Communications, Inc., <i>et al.</i> , Case No. 14-1106-GMS (D. Del.)
ATT-2002	Complaint – AT&T Intellectual Property I, L.P. <i>et al.</i> v. Cox Communications, Inc., <i>et al.</i> , Case No. 14-1106-GMS (D. Del.)
ATT-2003	Plaintiffs' Answering Brief in Opposition to Defendants' Motion to Transfer – Document 90, AT&T Intellectual Property I, L.P. <i>et al.</i> v. Cox Communications, Inc., <i>et al.</i> , Case No. 14-1106-GMS (D. Del.)
ATT-2004	Defendants' Answer, Affirmative Defenses, and Counterclaims – Document 38, AT&T Intellectual Property I, L.P. <i>et al.</i> v. Cox Communications, Inc., <i>et al.</i> , Case No. 14-1106-GMS (D. Del.)
ATT-2005	Aggregated Rule 7.1 Statements of Defendants – AT&T Intellectual Property I, L.P. <i>et al.</i> v. Cox Communications, Inc., <i>et al.</i> , Case No. 14-1106-GMS (D. Del.)
ATT-2006	Summary of Cox Entities
ATT-2007	E-mail dated July 21, 2015 from Gourdin W. Sirles to Jared Hoggan and attached draft Joint Stipulation to Dismiss Certain Cox Defendants
ATT-2008	Declaration of Robin Sangston in Support of Cox Communications, Inc.'s Motion to Dismiss – Document 35-3,

	Sprint Communications Company L.P. v. Cox Communications, Inc. <i>et al.</i> , Case No. 11-cv-2683 JAR (D. Kansas)
ATT-2009	Federal Communications Commission, Evolution of Cable Television, available at https://www.fcc.gov/print/node/37265 .
ATT-2010	Order Denying Motion to Transfer – Document 132, AT&T Intellectual Property I, L.P. <i>et al.</i> v. Cox Communications, Inc., <i>et al.</i> , Case No. 14-1106-GMS (D. Del. July 9, 2015)
ATT-2011	CCI's Supplemental Brief Concerning Personal Jurisdiction – Document 56, Sprint Communications Company L.P. v. Cox Communications, Inc. <i>et al.</i> , Case No. 11-cv-2683 JAR (D. Kansas)
ATT-2012	Complaint – Cox Communications, Inc., <i>et al.</i> v. Sprint Communications Company <i>et al.</i> (D. Del.)
ATT-2013	Stipulation and Order of Dismissal of Cox Communications Inc. and Substitution of CoxCom, LLC – Document 11, Joao Control & Monitoring Systems, LLC v. Cox Communications Inc., Case No. 1:14-CV-520-GMS (D. Del. Oct. 7, 2014)
ATT-2014	Stipulation and Order to Substitute – Document 9, Futurevision.com, LLC v. Cox Communications, Inc. <i>et al.</i> , Case No. 14-870-GMS (D. Del. Sept. 3, 2014)
ATT-2015	IPR2015-01477 – Petition for <i>Inter Partes</i> Review of U.S. Patent No. 6,587,046
ATT-2016	IPR2015-01477 – Petitioners' Power of Attorney
ATT-2017	IPR2015-01760 – Petition for <i>Inter Partes</i> Review of U.S. Patent No. 6,549,130
ATT-2018	IPR2015-01796 – Petition for <i>Inter Partes</i> Review of U.S. Patent

	No. 5,563,883
ATT-2019	Complaint – C-Cation Technologies, LLC v. Atlantic Broadband Group, LLC et al. (D. Del.)
ATT-2020	Summary of Cox Entity <i>Inter Partes</i> Review Petitions
ATT-2021	Collection of Dun and Bradstreet Reports of Cox Entities
ATT-2022	Declaration of Stephanie Allen-Wang in Support of Cox's Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) – Document 78, AT&T Intellectual Property I, L.P. <i>et al.</i> v. Cox Communications, Inc., <i>et al.</i> , Case No. 14-1106-GMS (D. Del.)
ATT-2023	Summary of Cox Entity Leadership

UNITED STATES PATENT AND TRADEMARK OFFICE

COX COMMUNICATIONS, INC.

Petitioner

v.

AT&T INTELLECTUAL PROPERTY I, L.P.

Patent Owner

Case IPR2015-01227

Patent 7,907,714

Title: PROFILE MANAGEMENT SYSTEM INCLUDING USER INTERFACE
FOR ACCESSING AND MAINTAINING PROFILE DATA OF USER
SUBSCRIBED TELEPHONY SERVICES

CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6, that service
was made on the Petitioner as detailed below.

Date of service September 2, 2015

Manner of service Federal Express delivery

Documents served Patent Owner's Preliminary Response
Exhibits 2001 – 2023

Persons served Steven M. Bauer
Proskauer Rose LLP
One International Place
Boston, MA 02110
PTABMattersBoston@proskauer.com

/David W. O'Brien/

David W. O'Brien

Registration No. 40,107