

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

WHEREVERTV, INC.	§	
	§	
Plaintiff,	§	
vs.	§	
	§	CIVIL ACTION NO. 2:18-cv-529-UA-CM
COMCAST CABLE COMMUNICATIONS,	§	
LLC,	§	
	§	
Defendant	§	

**PLAINTIFF’S OBJECTIONS AND ANSWERS TO DEFENDANT’S
INTERROGATORIES (NOS. 1-2)**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Case Management and Scheduling Order in Patent Case (Dkt. 58), Plaintiff WhereverTV, Inc. (“WTV”) hereby serves its Objections and Answers to Defendant Comcast Cable Communications, LLC (“Defendant” or “Comcast”)’s Interrogatories as follows:

RESPONSES TO REQUEST FOR PRODUCTION

INTERROGATORY NO. 1. Separately for each asserted claim of the patent-in-suit, state the date on which the claimed invention was conceived and the date on which the claimed invention was reduced to practice; describe in detail all facts and circumstances relating to the conception, alleged diligence, and reduction to practice of each such claimed invention; identify each person with knowledge of such conception, diligence, or reduction to practice, including the nature of each person’s participation, involvement, and/or contribution to such conception, diligence, and/or reduction to practice; and identify all documents by Bates Numbers relating to or corroborating such conception, diligence, or reduction to practice.

ANSWER:

WTV endeavors to answer the questions in this interrogatory in approximately the order they appear. It is WTV's understanding that the inventor conceived of each asserted claim in the invention at least by May 17, 2003. WTV's understanding is that Mark Cavicchia was outside the United States and could not watch a sporting event that was being televised in the United States, even though he was a subscriber to the cable company that was televising the event. Based on this experience, Cavicchia conceived of the invention and sought to develop a technology in a new way that would provide more flexibility and choices for consumers of video content. The specific problems that Cavicchia identified and tried to solve are more fully discussed in the '431 Patent. It is WTV's understanding that Cavicchia did not fully reduce his invention to practice until around the spring of 2006, a few months before the patent application was submitted to the USPTO. The person having knowledge of facts relating to the conception and reduction to practice is Cavicchia. WTV is not aware of anyone other than Cavicchia who was involved in conceiving of and reducing the invention to practice. Therefore, Cavicchia would likely have more information than WTV regarding the answer to this interrogatory.

WTV objects to this interrogatory to the extent it asks WTV to identify all documents by Bates number that relate to or corroborate the conception, diligence, or reduction to practice because these topics may turn on Cavicchia's own memory and understanding, and WTV may not be aware of all of the details that could relate to other documents. Additionally, the documents produced in this case are just as accessible to Comcast as they are to WTV, so Comcast can make its own legal determination regarding what is "relevant" to these issues. Subject to these objections, and pursuant to Federal Rule of Civil Procedure 33(d), WTV directs Comcast to the inventor notes having Bates number range WTV 001654-001664 and the file

wrapper for the '431 Patent having Bates Number range WTV 000431-1218. WTV incorporates these documents by reference into this answer pursuant to Federal Rule of Civil Procedure 33(d). Cavicchia in particular would likely have more information to add regarding the information memorialized in his inventor notes.

INTERROGATORY NO. 2. Separately for each asserted claim of the patent-in-suit, identify all facts (whether tending to support or negate a conclusion of non-obviousness) of which WhereverTV is aware regarding any “secondary considerations” or “objective indicia of obviousness or nonobviousness,” and any nexus between such secondary consideration or objective indicia and the claimed invention, and separately for each such fact, an identification of the persons most knowledgeable with respect to that fact and an identification of each document by Bates Numbers that relates to that fact.

ANSWER:

WTV objects to this interrogatory to the extent it overlaps with information that would be provided by an expert witness, as the deadline for designating experts has not arrived under the Court’s Scheduling Order and, therefore, WTV reserves its right to supplement this interrogatory answer with expert analysis and opinions in accordance with the Court’s Scheduling Order. Subject to this objection, WTV answers as follows: For decades, there has been a long felt need with consumers of linear streamed or video content that consumers did not have enough choices or flexibility when it came to how they accessed and viewed content. Consumers of linear streamed or video content have desired more control over their choices of the content they wanted to watch, how they watched and on what devices they could watch it on. Customers have also long desired the ability to customize the way and what they watch and how they interacted with streaming video content (e.g., adding and deleting channels to allow for just what

they wanted to watch, voice recognition to assist with content searches, unbundling of content, etc.). Consumers certainly desired more choices and flexibility during the heyday of the MSOs, especially in light of the vast amount of unwanted content coupled with the always-rising cable subscription prices, poor customer service, and the take-it-or-leave-it attitude. Moreover, the past, current and projected commercial successes of devices that have entered into the market that either embody or share characteristics with the patent-in-suit such as Comcast's accused product, among other products, and their ability to resolve some of these long felt problems further supports a finding that the patented claims at issue in this case are not obvious. Comcast's own financials are also likely to support these secondary factors of non-obviousness. WTV anticipates that Cavicchia would have additional knowledge regarding the information requested in this interrogatory and that he may be able to add more relevant information. As with the prior interrogatory, WTV objects to this interrogatory to the extent it asks WTV to identify all documents by Bates number that relate to this interrogatory because fact discovery is just beginning and more relevant information will likely be identified as the case moves forward, especially during expert discovery, plus Comcast is equally able to make a legal determination as to what documents Comcast believes are "relevant." Subject to this objection and pursuant to Federal Rule of Civil Procedure 33(d), WTV directs Comcast's attention to some of the articles that WTV is producing that address the historic lack of choices and flexibility available to cable customers and ongoing cord cutting and OTT trends.

Respectfully submitted,

/s/ Adam Sanderson

Adam Sanderson (*special admission, L. R. 2.02*)

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CERTIFICATE OF SERVICE

I hereby certify that, on March 7, 2019, I caused the above and foregoing document to be sent via electronic mail to counsel for Defendant:

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