

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC.,  
Petitioner,

v.

FOCAL IP, LLC,  
Patent Owner.

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Cases: IPR2016-01254 and IPR2016-01257  
Patent 8,457,113 B2

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Record of Oral Hearing  
Held: September 19, 2017

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Before SALLY C. MEDLEY, JONI Y. CHANG, and BARBARA  
A. PARVIS, *Administrative Patent Judges.*

Cases: IPR2016-01254 and IPR2016-01257  
Patent 8,457,113 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing Tuesday,  
September 19, 2017, commencing at 3:30 p.m. at the U.S. Patent and  
Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

1  
2 JUDGE PARVIS: This is an oral argument in IPR 2016-01254  
3 and 01257. The challenged patent in these proceedings is U.S. Patent  
4 Number 8,457,113 B2.

5 Each of petitioner Cisco Systems, Incorporated, and patent owner  
6 Focal IP, LLC, will have 30 minutes total to present its arguments.

7 At this time I'd like counsel to introduce themselves, your partners,  
8 and guests starting with petitioner.

9 MR. STACY: Wayne Stacy and Jay Schuller.

10 JUDGE PARVIS: For the patent owner, is it the same?

11 MR. BUMGARDNER: Yes. The same, Your Honor.

12 JUDGE PARVIS: Thank you. So any time you are ready, counsel  
13 for petitioner, you may proceed.

14 MR. STACY: Thank you. I'll reserve 15.

15 So I wanted to -- with the shorter time, we agreed to try to  
16 minimize any duplications. So I'm going to focus on the issues that are  
17 mostly unique to the Cisco-only petitions. One of the first things I  
18 wanted to touch on was the disclaimer issue. Just two minutes on this. I  
19 wanted to show a couple of things that may have been lost during some  
20 of the presentations today.

21 So looking at the '113 patent. The material that was presented by  
22 patent owner earlier seemed to confuse the concept of edge device and  
23 edge switch. And they ran the two things together time after time. And  
24 you see it in their construction.

25 They are actually two very different things in the patent. And the  
26 material, if you recall, that patent owner went through and said, Here's

1 one, two, three, four, five, six different disparagements of edge switches  
2 and edge devices. And when you look at it, they always ran those  
3 together.

4 The material they point to is in column two of the '113 patent or  
5 the equivalent. And the primary paragraph that patent owner relies on  
6 talks about edge devices over and over. You don't find a mention of edge  
7 switches. And in fact, it doesn't even talk about all edge devices. It talks  
8 about two specific types of edge devices. And I highlighted them there --  
9 it's not very pretty -- but edge devices, such as phones and PBXs.  
10 So what they're talking about there, they are disclaiming having the  
11 ability to on my phone dial star 81 or the PBX that a company might  
12 have, programming it in there. So it's a very specific edge device that  
13 they are attacking.

14 And then when you look at the rest of the disclosure that they kind  
15 of don't really touch a lot, look at some of the other things that they're  
16 really disparaging.

17 Again, from column 2, in other words, past systems for  
18 provisioning, meaning addition, modification, or control of telephone  
19 features, require the subscriber to make the feature selection through the  
20 telephone business office. Central office workers would then implement  
21 the provisioning under request of the business office.

22 So this is when I wanted a specific T1 line. I wanted something  
23 turned on. I'd pick up the phone, I call, and they'd provision it from the  
24 headquarters. That's the kind of thing that they were attacking and  
25 disparaging here. This isn't about switches -- edge switches versus -- or I  
26 should leave it at edge switches.

1           And when they come down to the initial solution, what do they  
2 describe as their solution after laying out these problems?

3           The solution, very broadly, a system for allowing a subscriber to  
4 remotely control features is described herein along with various  
5 telephone features that may be programmed into the system.

6           That's their grand solution.

7           And in the summary of the invention portion, they keep going on.  
8 Notice this piece of the disparagement has nothing to do with edge  
9 switches. It's a direct third-party control means the ability to provision  
10 the third-party features is directly available to a subscriber, eliminating  
11 the need to go through the telephone company -- telco -- business office.  
12 That relates back to the disparagement above it about having to call in  
13 and ask somebody, can you give me access to these types of features.

14           But then right under that, notice this is what all of the law talks  
15 about having multiple embodiments. And the reason you've got cases  
16 like fast cath that say even if you have a single embodiment, that's not a  
17 disclaimer. The federal circuit's been very clear.

18           And right under this solution, look what they talk about. In one  
19 embodiment the system includes -- you can see that embodiment, and  
20 then right underneath that, in another embodiment -- in this other  
21 embodiment, that's the first time you get this tandem access controller.

22           So there is no disclaimer. There are multiple embodiments. And  
23 that was the question that had come up earlier.

24           The disparagement is not about edge switches. The disparagement  
25 that's here, the only thing that could be there, is on an actual phone or on  
26 an actual PBX or having to call in to the business office. That term is not

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