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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN On Behalf of Themselves and All Others Similarly Situated, Plaintiffs,	No. CV-06-00672-VRW
vs.	DATE: June 23, 2006
	TIME: 9:30 A.M.
AT&T CORP., et al.,	CTRM: 6, 17th Floor
Defendants.	JUDGE: Hon. Vaughn R. Walker, Chief U.S. Dist. Judge

NOTICE OF MOTION OF ERIC SCHNEIDER FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

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In Pro Se as Amicus Curiae

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on June 23, 2006, at 9:30 a.m., in Courtroom 6 of the above-captioned Court, located at 450 Golden Gate Ave., 17th Floor, San Francisco, California, the undersigned proposed Amicus Curiae will and hereby do move the Court for leave to appear and file the accompanying proposed Brief of Amicus Curiae supporting unsealing of the documents provided to plaintiffs' counsel the Electronic Frontier Foundation by former AT&T employee Mark Klein and filed with the court under seal pursuant to Local Rule 79-5.

Proposed amicus is Eric Schneider as described in the Statement of Interest in the attached proposed brief. Proposed amicus believes the attached brief of amicus curiae is desirable in this case, and the matters asserted are relevant to the disposition of this case, because the attached brief sets forth a legal argument based on the public interest in openness of court proceedings and filings, and also sets forth the specific interests of the American public in the presumptive content of the sealed documents, which are perspectives distinct from those of the litigants.

For the above stated reasons, amicus respectfully requests that the Court grant this motion and accept the attached brief of amicus curiae.

Dated: June 20, 2006

Respectfully submitted,

Eric Schneider

In Pro Se as Amicus Curiae

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN On Behalf of Themselves and All Others Similarly Situated, Plaintiffs,	No. CV-06-00672-VRW
vs.	DATE: June 23, 2006
	TIME: 9:30 A.M.
AT&T CORP., et al.,	CTRM: 6, 17th Floor
Defendants.	JUDGE: Hon. Vaughn R. Walker, Chief U.S. Dist. Judge

BRIEF OF AMICUS CURIAE ERIC SCHNEIDER IN SUPPORT OF THE MOTION BY LYCOS, INC AND WIRED NEWS TO INTERVENE AND UNSEAL DOCUMENTS

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I. INTRODUCTION

This amicus brief addresses a limited issue before the Court: Whether documents, now temporarily lodged under seal, should be unsealed and filed in the public record.

II. STATEMENT OF INTEREST

I, the undersigned, pro se, Eric Schneider, a United States citizen am not a party to these proceedings and have no economic stake in the outcome of this case. Like most any other member of the public with some level of awareness regarding this instant class action suit, there had been at first only an indirect interest in the sense that several media organizations have filed motions to intervene and unseal documents (Docket No.133 filed on May 19, 2006 and Docket No. 139 filed on May 23, 2006) into the public domain on behalf of the public.

This however had quickly **shifted to a much more relevant and direct interest** late evening of June 13, 2006 **upon discovering subject matter** which has **been accessible to the public since summer 2001** (the "Discovery") which I believe, based upon my professional expertise, challenges and **brings forth a new argument not yet made in this instant case that could make moot AT&T's claim of trade secrecy** (Docket No. 195 filed on June 12, 2006) regarding at least a portion of the over 140 pages of documents (the "Sealed Documents") submitted as evidence under seal (Docket No. 31 and Docket No. 32 filed on April 5, 2006).

III. BACKGROUND INFORMATION

The Discovery was prompted by way of using an online search engine in an attempt to locate such type or class of subject matter in response to reading an online Wired News article by

Ryan Singel, entitled, “AT&T: Wired News Is a 'Scofflaw'”, published the same day, available at http://wired.com/news/technology/0,71146-0.html or (see Exhibit A)

The article reports on the AT&T opposition filed the previous day (Docket No. 195 filed on June 12, 2006) disclosing AT&T's claim of trade secrecy regarding the Sealed Documents. More specifically the article stated,

> “On May 22, Wired News published 30 pages [actually 29 pages] of documents (the “Published Documents”) acquired from an anonymous source who is not a party to the case. The papers include an affidavit from whistle-blower Mark Klein and 8 pages of documents (the “Proprietary Documents”, which are referenced as pdf 1-8 in the Published Documents) stamped ‘AT&T Proprietary.’ The AT&T pages are believed to be excerpts from some of the documents filed under seal in the case, and depict a detailed scheme for capturing and analyzing data flowing through AT&T's fiber-optic backbone.”

The Published Documents including the Proprietary Documents are the same documents filed by Bruce A. Ericson (Docket No. 162 – Exhibit A filed on June 2, 2006) and are also available at http://blog.wired.com/27BStroke6/att_klein_wired.pdf

The article further explains with respect to the filed opposition that AT&T neither confirms nor denies that the published Proprietary Documents can be compared to the sealed evidence, but rather leaves such determination up to the Court.

Wired News motion to intervene and unseal (Docket No. 139 filed on May 23, 2006), argued in Page 11 lines 12-16, that

> “The government has not asserted that the documents in question raise concerns about national security; it has merely stated that it does not object to AT&T filing them under seal. (Docket No. 43, at 19 (Coppolino letter to EFF).) Rather, the only rationale offered for sealing the records is AT&T's assertion that they contain trade secrets.”

Wired News is not the only media organization to have filed a motion to intervene and unseal. Other media organizations including San Francisco Chronicle, the Los Angeles Times, the Associated Press, the San Jose Mercury News, Bloomberg News and USA Today had also filed a similar motion to intervene and unseal (Docket No. 133 filed on May 19, 2006). These

same organizations filed memorandum in opposition to motion to seal, motion to intervene, and closure of courtroom (Docket No. 129 filed on May 17, 2006), which asserted in page 5 lines 18-19 that, "AT&T has designated, in conclusory fashion, documents as confidential. But saying it doesn't make it so."

This was followed by an AT&T memorandum filed in opposition to the motion of these media organizations (Docket 160 filed June 2, 2006), which argued in page 1 lines 9-11, "The Press adds nothing to the mix. Its papers say nothing that the parties and the existing *amici* have not already said," and in page 8 lines 13-17,

> "It is the Press that must carry the burden of explaining why the Court should reconsider its rulings. *See* Civ. L.R. 7-9 (requiring for a motion for reconsideration both leave of court and a showing of either a material change of law or facts or a failure of the Court to consider facts or law that were presented to it). The Press makes no such showing."

IV. DUE DILIGENCE SUPPORTS A STATEMENT OF INTEREST

Since learning of the Discovery I have remained due diligent to do everything in my power to uphold a personal moral and ethical obligation of attempting to have this Discovery submitted by any means to the Court. This can be shown in an open email letter, copy of which is available at http://gen-eric.com/openletter or (see Exhibit B) that I had published June 16, 2006 to Ryan Singel and had carbon copied to 20 attorneys representing those in support of any filed motion to unseal which I believe further demonstrates from me a direct interest.

Aside from sending kudos regarding the article, in the open letter I state,

> "Ideally, I would have attempted to make the Court aware of this newly discovered information directly in the form of an amicus curiae brief, but stand alone in the 11th hour without the resource or experience to be truly effective by exercising this means at this time",

then further state,

> "the only action I can realistically take is sending this open email letter to you along with carbon copies to legal representatives of those entities or parties of interest and others similarly situated. By so doing, this new information can at the very least be brought to the court of public opinion and also brought to a lesser degree of separation toward its possible admission to the Court via those entities that may use this information in any filings with the Court."

And additionally state,

> "I am both available and willing to help bring this new information before the Court if there are those reading this letter that do recommend such an amicus brief be filed in my name or on my behalf in light of the above information and can further refer or have the expertise and time resource available to help make it so."

Sadly there remains no help. Pro se is sometimes choice less. Though at the time of publishing the open letter, it was my belief that it would be virtually impossible for me to file this brief, due to time constraint, no experience in submitting a court filing, and the fact that I barely new the true purpose of an amicus curiae brief less than a week ago, I have since continued to remain diligent and committed to drafting this brief in hope of accomplishing what I believe is my obligation to submit the Discovery, the subject matter of which, I believe to be too strong to be ignored. Therefore amicus respectfully requests that the Court accept the instant brief of amicus curiae.

V. ARGUMENT

The Discovery Challenges Whether Sealed Documents are Considered Trade Secret.

As shown in the background, the arguments between Press and AT&T are polarized. AT&T asserts that Press does not produce a new argument whereas Press asserts that AT&T does not specify what portions of Sealed Documents is trade secret.

What is needed is a fresh approach toward arguing the trade secret aspect of this case. I believe the Discovery as will be shown below can be used as a new matter of fact regarding such an alternate approach to the trade secret argument.

A closer look at the filed AT&T opposition (Docket No. 195 filed on June 12, 2006) discloses the following on page 9 lines 13 -16,

> "AT&T also has a genuine interest in protecting its trade secrets. AT&T has developed technology for splitting and cross-cutting fiber optics. While not the sort of stuff that sells newspapers, that technology has commercial value, and it is technology in which AT&T has a substantial lead over its competitors.[38]"

The context of this statement is made with respect to footnote [38] which reads,

> "Wired says: "There is no 'market' for information on how to install splitters in a fiber optic network. The information in dispute here has no commercial value; rather it is simply embarrassing to AT&T . . . ." Wired Motion at 11. That simply is wrong. AT&T has a substantial lead over its competitors in such technology and uses it to make money in ways that have nothing whatsoever to do with the subject matter of this litigation."

By this admission of AT&T, one can deduce that at least a portion of the Sealed Documents that AT&T claims is trade secret **regardless of whether the seal includes the Proprietary Documents or not**, more specifically pertains to "developed technology for splitting and cross-cutting fiber optics" and "information on how to install splitters in a fiber optic network". A few observations about such trade secret claims are in order.

The technology disclosed in the Published Documents including the Proprietary Documents pertain to how fiber optic signals are split in conjunction with LGX bay panels for the purposes of monitoring near all Internet data traffic across common backbone optical circuits in support of the Government's warrantless wiretapping program.

Such information **cannot be considered trade secret** in light of the fact that substantially the same technology had already been published July 10, 2001 by the Government in the form of

U.S. Patent 6,259,850 (the “850 patent”) issued to Lucent Technologies, entitled, “Crossconnect module having monitoring provisions.” A PDF copy of the ‘850 patent is available at, http://gen-eric.com/patents/pdf/pat6259850.pdf or (see Exhibit C).

An aspect of my expertise comes from my experiences as a prolific pro se independent inventor and a named inventor of 11 Internet-related U.S. patents (U.S. Patent Nos. 5987464, 6338082, 6442549, 6678717, 6760746, 6895430, 6901436, 6944658, 6973505, 7010568, 7035896). It was clear to me upon reading the ‘850 patent, as it would be clear to anyone of ordinary skill in the art upon reading the ‘850 patent, that one would be enabled with the know-how to make the modifications necessary to split and monitor optical signals without undue experimentation thereby independently accomplishing the same result in a manner similar to that which is disclosed in the Proprietary Documents.

Review of the patent abstract and independent Claim 9, for example, provides a strong indication that the patented technology is substantially similar. Upon further review, the '850 patent discloses, particularly in Figure 4 and its associated specification, how this technology can be specifically integrated into an LGX panel (see col 4 lines 20-28).

Upon a more detailed analysis, Proprietary Document pdf 3 (same as Published Document page 8 of 29) and Proprietary Document pdf 7 (same as Published Document page 12 of 29) both illustrate different views of Splitter to LGX connectivity by showing how the rear of a specific LGX bay panel (LLGX 13) is configured for dedicated operative communication with the splitter cabinet for the purpose of splitting and monitoring Internet data traffic along the common backbone optical circuits. The splitter cabinet in operative communication with the dedicated LGX panel, in combination, performs the similar function as the cross-connect module (10) with monitoring function as disclosed in the '850 patent (see Fig. 3).

When this combination of cabinet and dedicated panel is further interfaced and in operative communication with other ordinary LGX bay panels, a function more similar to that as disclosed in Fig. 4 and corresponding written specification of the '850 patent is performed. The '850 patent is by far a much more elegant solution of 'optical cross-connect split and monitor' technology making the technology as disclosed in at least a portion of the Published Documents look like a 'mere-hack job'.

In summary, the so called Proprietary Documents of AT&T has already been available to the public making the AT&T claim (Docket No. 195 filed on June 12, 2006) that Wired News leaked trade secret information baseless and moot.

If anything, AT&T, might consider being more concerned of the potential of possible infringement upon the '850 patent to Lucent, who may very well have the legal right to exclude AT&T from making, using or selling, the invention as set forth in the claims. There is though the possible consideration that, if the United States Government is found to infringe a patent, the patent holder has a remedy for damages in the United States Claims Court. The Government may use any patented invention without permission of the patent holder, but the patent holder is entitled to obtain compensation for the use by or for the Government.

It is black-letter law that information cannot be a trade secret once it is publicly available. See Cal. Civ. Code § 3426.1 (trade secret is one that is not generally known); Religious Tech. Ctr. v. Netcom On-Line Comm. Servs., 923 F.Supp. 1231, 1255-57 (N.D. Cal. 1995).

The '850 patent to Lucent clearly demonstrates that at least a portion of the Sealed Documents had already been publicly available. Therefore such information cannot be considered trade secret.

VI. CONCLUSION

Given that much of the content of the Sealed Documents has been shown not to be trade secret information in light of the above reasoning, amicus urges the Court to release all relevant documents to the public as soon as possible.

Dated: June 20, 2006

Respectfully submitted,

Eric Schneider

In Pro Se as Amicus Curiae

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NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. AT&T CORP., et al., Defendants.	No. CV-06-00672-VRW DATE: June 23, 2006 TIME: 9:30 A.M. CTRM: 6, 17th Floor JUDGE: Hon. Vaughn R. Walker, Chief U.S. Dist. Judge

[PROPOSED] ORDER REGARDING LEAVE TO FILE BRIEF OF AMICUS CURIAE ERIC SCHNEIDER

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In Pro Se as Amicus Curiae

Pursuant to Civil Local Rule 7-11, and good cause appearing, it is HEREBY ORDERED as follows:

Proposed amicus Eric Schneider is granted leave to appear in pro se as amicus curiae and the Court will accept for filing his Brief of Amicus Curiae of June 20, 2006, supporting unsealing of the documents provided to plaintiffs' counsel the Electronic Frontier Foundation by former AT&T employee Mark Klein and filed with the court under seal pursuant to Local Rule 79-5.

*** * ***

ORDER

IT IS SO ORDERED.

DATED:_____ _____

THE HON. VAUGHN R. WALKER

CHIEF UNITED STATES DISTRICT JUDGE

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

I, Eric Schneider, declare under penalty of perjury that the following is true and correct:

1. I am submitting this declaration in Pro Se as Amicus Curiae in support of the motion by Lycos, Inc and Wired News to intervene and unseal documents. Except for those matters stated on information and belief, which I believe to be true, I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto.

2. On June 13, 2006, Wired News published on its website an article titled “AT&T: Wired News Is a 'Scofflaw'”. A true and correct copy of the article is attached hereto as Exhibit A.

3. On June 16, 2006, GEN-ERIC Patent News published on its website an open letter titled "URGENT: Open Letter regarding story of AT&T accusing Wired News of stealing Trade Secrets". A true and correct copy of the open letter is attached hereto as Exhibit B.

4. On July 10, 2001, the United States Patent and Trademark Office issued U.S. Patent No. 6,259,850 to Lucent Technologies titled, "Crossconnect module having monitoring provisions". A true and correct copy of the patent is attached hereto as Exhibit C.

5. I am a named inventor of U.S. Patent Nos. 5987464, 6338082, 6442549, 6678717, 6760746, 6895430, 6901436, 6944658, 6973505, 7010568, and 7035896.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 20, 2006, at Delray Beach, Florida.

Eric Schneider
In Pro Se as Amicus Curiae

Exhibit A

AT&T: Wired News Is a 'Scofflaw'

By Ryan Singel | Also by this reporter
15:00 PM Jun, 13, 2006

Wired News is a "scofflaw" full of "hot air" and should not be heard in a class-action lawsuit accusing AT&T of violating customers' privacy by cooperating with the National Security Agency in a warrantless internet wiretap operation, the telecommunications company said in a court filing Monday.

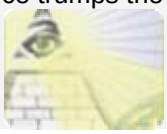
Inside the Secret Room

Stumbling Into a Spy Scandal
Years before the NSA's warrantless surveillance program made national headlines, then-AT&T technician Mark Klein suspected his company was colluding with the government to spy on Americans.

Whistle-Blower's Evidence, Uncut
Klein's firsthand account of how he discovered a secret room allegedly routing American internet traffic straight to the NSA -- along with the documents he says prove his case.

The Ultimate Net Monitoring Tool
A little-known company called Narus makes the packet-inspection technology said to be the basis of the NSA's internet surveillance. Here's how it works.

Why We Published the AT&T Docs
We believe the public's right to see the evidence trumps the telecom giant's secrecy claims.



Plus:
Daily updates from 27B Stroke 6, the Wired News security and privacy blog.

AT&T was responding to a May 23 petition from Wired News asking to intervene in the case in order to seek the unsealing of more than 140 pages of documents submitted as evidence.

On May 22, Wired News published 30 pages of documents acquired from an anonymous source who is not a party to the case. The papers include an affidavit from whistle-blower Mark Klein and eight pages of documents stamped "AT&T Proprietary." The AT&T pages are believed to be excerpts from some of the documents filed under seal in the case, and depict a detailed scheme for capturing and analyzing data flowing through AT&T's fiber-optic backbone. Klein's accompanying statement describes the setup as part of an NSA wiretap operation in AT&T's San Francisco switching center.

The AT&T filing (.pdf) carefully avoids confirming that the documents originated with the company, or match the documents under seal. But it does accuse Wired News of misappropriating and "leaking" trade secrets by publishing the evidence. The telecommunications giant also accuses Wired News of violating the judge's order that the plaintiffs in the case not distribute the documents further.

Wired News' publication of the documents "was neither lawful nor innocent," AT&T wrote. "Wired (News) has leaked eight pages of what it claims are AT&T Proprietary documents -- and did so despite actual knowledge that AT&T claims its documents contain trade secrets and the court had ordered that such documents remain under seal."

U.S. District Judge Vaughn Walker previously denied AT&T's request to extend that order beyond the plaintiffs, and explicitly rejected the company's bid to extend the order to Klein, a former company technician who turned against AT&T after concluding that the company was breaking the law.

The company added the judge should reject Wired News' petition to intervene, because the judge had earlier declined to unseal the documents at the request of the Electronic Frontier Foundation, which is pressing the case against AT&T. The company argued the evidence contains technical trade secrets pertaining to the splitting of fiber-optic cables. AT&T is the industry leader in techniques for tapping fiber optics (which can be useful for legitimate network monitoring, as well as wiretapping) and uses that edge to make money, the filing claims.

In its motion (.pdf), Wired News argued that the court should unseal the evidence because trade secrets are no longer protected after they have been made public, that the judge has yet to rule on whether the documents contain trade secrets, and that the public's right to know trumps AT&T's right to protect its intellectual property.

"AT&T's conclusory assertion that these documents are proprietary is unpersuasive in the context of a raging national debate regarding the apparent cooperation of the nation's largest telecommunications company in a broad domestic spying program," an attorney for Wired News wrote. "Any proprietary value that AT&T sees in technical documents describing the manner in

which the lines were tapped must yield to the public's right to be informed about behavior that implicates the fundamental rights of many millions of Americans."

Wired News' motion to intervene, as well as a similar motion from print media, will be considered at the next hearing in the case, set for June 23. Also at issue that day will be the government's and AT&T's motions to dismiss the case. The Bush administration wants the lawsuit thrown out on the grounds it would reveal national security secrets. Last week, Walker examined classified papers filed by the government in support of that claim.

This week, the government gave a preview of its upcoming argument as it defended its warrantless wiretapping program in a separate lawsuit filed by the American Civil Liberties Union. In that lawsuit, the ACLU is arguing that the NSA program violates the free-speech rights of Americans, who cannot speak freely to civil rights groups and journalists for fear of covert government monitoring.

In the first hearing in that case Monday, the government told the judge that the surveillance is lawful, but "the evidence we need to demonstrate to you that it is lawful cannot be disclosed without that process itself causing grave harm to United States national security," according to *The New York Times*. The ACLU argued that the judge needs no extra classified evidence to find the administration's warrantless wiretapping of Americans illegal.

A similar lawsuit, brought in New York state by the Center for Constitutional Rights, has not yet

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Exhibit B

GEN-ERIC Patent News

Your Source for the Latest Patent Information

LUCENT PATENT COULD THWART AT&T CLAIMS OF TRADE SECRECY IN EFF SUIT OVER NSA DOMESTIC SPY SCANDAL

06/16/06

URGENT: Open Letter regarding story of AT&T accusing Wired News of stealing Trade Secrets

Ryan,

I am writing this open letter to you in response to your article, **AT&T: Wired News Is a 'Scofflaw'** published June 13, 2006 by Wired News at **http://wired.com** and welcome the forwarding of this letter to any that may have interest in the following:

It is my belief that I have found information which has been accessible to the public since summer 2001 which challenges and may make moot AT&T's claim of trade secrecy regarding at least a portion of the 140 pages of documents submitted as evidence under seal in the **class action suit** filed January 31, 2006 by the **Electronic Freedom Foundation (EFF)** against AT&T on behalf of their customers for allegedly "participating in a secret and illegal government program to intercept and analyze vast quantities of Americans' telephone and Internet communications, surveillance done without the authorization of a court and in violation of federal electronic surveillance and telecommunications statutes, as well as the First and Fourth Amendments to the United States Constitution." **http://www.eff.org/legal/cases/att/** *(this link is an excellent resource regarding this case)*

Your article reports the June 12, 2006 **AT&T filed opposition** to the May 23, 2006 motion of Lycos, Inc. and Wired News for orders permitting intervention and unsealing documents. In the filed opposition, AT&T neither confirms nor denies that the 8 of 30 pages (**Klein Documents**) stamped "AT&T Proprietary" published by Wired News on May 22, 2006 can be compared to the sealed evidence, but rather leaves such determination up to the Court. However page 9 lines 13 -16 of the filed opposition reads, "AT&T also has a genuine interest in protecting its trade secrets. AT&T has developed technology for splitting and cross-cutting fiber optics. While not the sort of stuff that sells newspapers, that technology has commercial value, and it is technology in which AT&T has a substantial lead over its competitors.[38]"

The context of this statement is made with respect to footnote [38] which reads, "Wired says: "There is no 'market' for information on how to install splitters in a fiber optic network. The information in dispute here has no commercial value; rather it is simply embarrassing to AT&T . . . ." Wired Motion at 11. That simply is wrong. AT&T has a substantial lead over its competitors in such technology and uses it to make money in ways that have nothing whatsoever to do with the subject matter of this litigation."

By this admission of AT&T, one can infer or deduce that at least a portion of the subject matter under seal that AT&T claims trade secret regardless of whether the seal includes the 8 published

"AT&T Proprietary" pages or not, more specifically pertains to "developed technology for splitting and cross-cutting fiber optics" and "information on how to install splitters in a fiber optic network". A few observations about such trade secret claims are in order.

The technology disclosed from the published Klein Documents including the 8 published "AT&T Proprietary" pages pertain to how fiber optic signals are split in conjunction with LGX bay panels for the purposes of monitoring near all Internet backbone data traffic in support of the Government's warrantless wiretapping program. Such information cannot be considered trade secret in light of the fact that substantially the same technology had already been published July 10, 2001 by the Government in the form of U.S. Patent 6,259,850 (the "850 patent") issued to Lucent Technologies, entitled, **Crossconnect module having monitoring provisions**. (A **Link to a PDF copy** of the '850 patent)

When the '850 patent is read by one of ordinary skill in the art, one would clearly be enabled with the know-how to make the modifications necessary to split and monitor optical signals without undue experimentation thereby independently accomplishing the same result in a manner similar to that which is disclosed in the 8 published "AT&T Proprietary" pages. Review of the patent abstract, for example, provides a strong indication that the patented technology is substantially similar. Upon further review, the '850 patent discloses, particularly in Figure 4 and its associated specification, how this technology can be specifically integrated into an LGX panel (see col 4 lines 20-28). In summary, the so called proprietary technology of AT&T has already been available to the public making the AT&T claim that Wired News leaked trade secret information moot.

If anything, AT&T, might consider being more concerned of the potential of possible infringement upon the '850 patent to Lucent, who may very well have the legal right to exclude AT&T from making, using or selling, the invention as set forth in the claims. Though there is the possible consideration that, if the United States Government is found to infringe a patent, the patent holder has a remedy for damages in the United States Claims Court. The Government may use any patented invention without permission of the patent holder, but the patent holder is entitled to obtain compensation for the use by or for the Government.

As you are well aware, Wired News is not the only media organization to have filed a motion to intervene and unseal these documents. On May 17, 2006 other media organizations including **San Francisco Chronicle**, the **Los Angeles Times**, the **Associated Press**, the **San Jose Mercury News**, **Bloomberg News** and **USA Today** joined in the common interest of unsealing these documents into the public domain on behalf of the public and had also **filed a similar motion to intervene** and unseal. This was followed by a June 2, 2006 filing of an **AT&T memorandum in opposition** to the motion of these media organizations stating, "The Press adds nothing to the mix. Its papers say nothing that the parties and the existing *amici* have not already said."

What the media organizations seems to need is a fresh approach toward arguing the trade secret aspect of this case. I believe disclosure of the '850 patent can be used as a new matter of fact regarding such an alternate approach to the trade secret argument. Ideally, I would have attempted to make the Court aware of this newly discovered information directly in the form of an amicus curiae brief, but stand alone in the 11th hour without the resource or experience to be truly effective by exercising this means at this time. Due to the scheduled hearing date of June 23, 2006 (regarding order granting Lycos and Wired hearing on motion to intervene and the Government's motion to dismiss under the State Secrets Privilege, for example) and the deadline of June 19, 2006 for the submission of new information, the only action I can realistically take is

sending this open email letter to you along with carbon copies to legal representatives of those entities or parties of interest and others similarly situated. By so doing, this new information can at the very least be brought to the court of public opinion and also brought to a lesser degree of separation toward its possible admission to the Court via those entities that may use this information in any filings with the Court before the Monday deadline. Let it be known that I am not a party to this case and that I am both available and willing to help bring this new information before the Court if there are those reading this letter that do recommend such an amicus brief should be filed in my name or on my behalf in light of the above information and can further refer or have the expertise and time resource available to help make it so.

Please keep in mind that this public information is the best I could find without access to the sealed documents. Even if such legal representatives do not find reason to use the argument that I have proposed, the alternate approach that I have presented may at least give those sources “close to the litigation” that have copies of AT&T confidential documents such as the plaintiffs, their counsel, their retained experts and consultants, and Mr. Klein fresh ideas for finding other patents or published literature or any prior art that may read on any other so called "trade secrets" under seal before the Monday deadline. Further let it also be known that I have provided patent reporting services in one form or another since 1993 and am available to be retained as an expert under signed confidentiality and non-disclosure agreement by any such sources in order to provide prior art search services in an attempt to find additional information supporting this argument with respect to all of the confidential documents under seal in its entirety.

In the event that the information that I have disclosed above becomes of further use or relevance with respect to any future reporting on this, I do humbly ask that reference be made to my blog **GEN-ERIC Patent News** as the source of this information wherein a copy of this open letter is soon to be posted. I invite your thoughts and comments on this and am interested in feedback from any and all who may read this open letter.

Lastly, as a dedicated reader of Wired since spring of 1993, I wish to extend kudos to you and Wired regarding the ongoing coverage of this story and case. The articles shown below that you have written have been quite eye opening to say the least and has helped me gain a greater appreciation and understanding of this case and how it affects the public and one's fundamental rights. Your writing does make a difference, for I would have never have come up with this alternate approach if it were not for the article you had posted earlier this week and do look forward to the stories from you that are yet to come. I can only hope that this reply might somehow help make a difference as well.

Best Regards,
Eric

Court Filing Confirms Spy Docs
Court Deals AT&T a Setback
Stumbling Into a Spy Scandal
Feds Go All Out to Kill Spy Suit
AT&T Seeks to Hide Spy Docs
Whistle-Blower Outs NSA Spy Room
AT&T Sued Over NSA Eavesdropping

CC'd to 20 lawyers representing the following:
Lycos
Wired News
Electronic Frontier Foundation
Center For Constitutional Rights
American Civil Liberties Union
San Francisco Chronicle
Los Angeles Times
Associated Press
San Jose Mercury News
Bloomberg News
USA Today
Mark Klein

Posted by GEN-ERIC at 10:58:23 am into the following categories: **Announcements**, In The News

Exhibit C

US006259850B1

(12) **United States Patent**
Crosby, Jr. et al.

(10) **Patent No.: US 6,259,850 B1**
(45) **Date of Patent: Jul. 10, 2001**

(54) **CROSSCONNECT MODULE HAVING MONITORING PROVISIONS**

(75) Inventors: **Marshall E. Crosby, Jr.**, Alpharetta; **Ronald Hergenroder**, Bartow, both of GA (US)

(73) Assignee: **Lucent Technologies Inc.**, Murray Hill, NJ (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **09/426,606**

(22) Filed: **Oct. 26, 1999**

(51) **Int. Cl.**[7] **G02B 6/00**
(52) **U.S. Cl.** **385/134**; 385/16; 385/24
(58) **Field of Search** 385/15, 16, 24, 385/27, 28, 134, 135, 147

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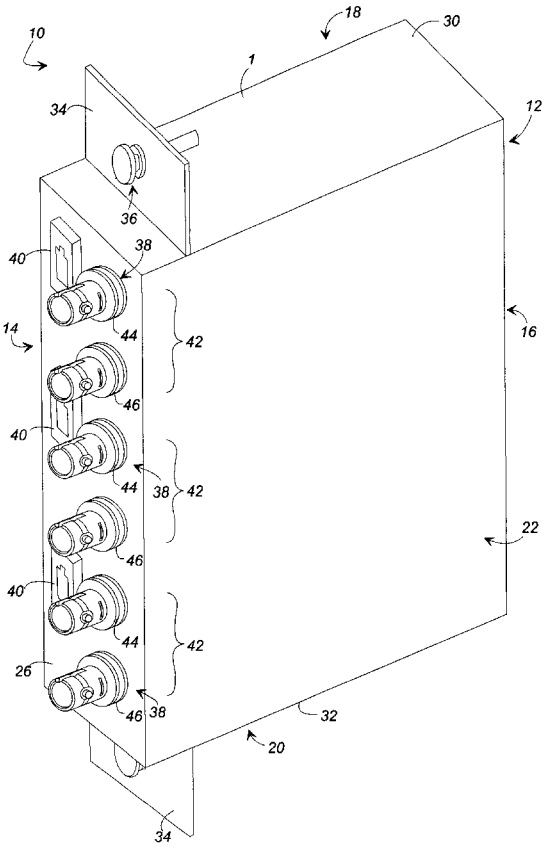
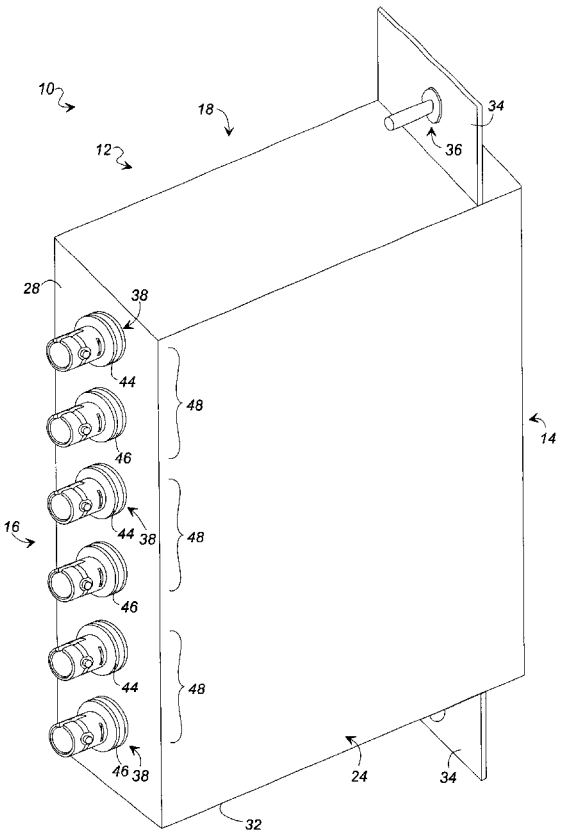
Primary Examiner—Cassandra Spyrou
Assistant Examiner—Euncha Cherry
(74) *Attorney, Agent, or Firm*—Thomas, Kayden, Horstemeyer & Risley, LLP

(57) **ABSTRACT**

The present disclosure relates to a crossconnect module that comprises a housing adapted for mounting within a cross-connect panel. In an example embodiment, the module includes first and second transmitting connectors connected to each other with a first transmission path and first and second receiving connectors connected to each other with a second transmission path. Further included is a monitoring connector, a signal splitter disposed within the housing along one of the first and second transmission paths, and a third transmission path extending from the signal splitter to the monitoring connector. In use, a portion of a signal transmitted along one of the first and second transmission paths is diverted by the signal splitter to the third transmission path so that the diverted portion of the signal can be monitored via the monitoring connector.

10 Claims, 4 Drawing Sheets





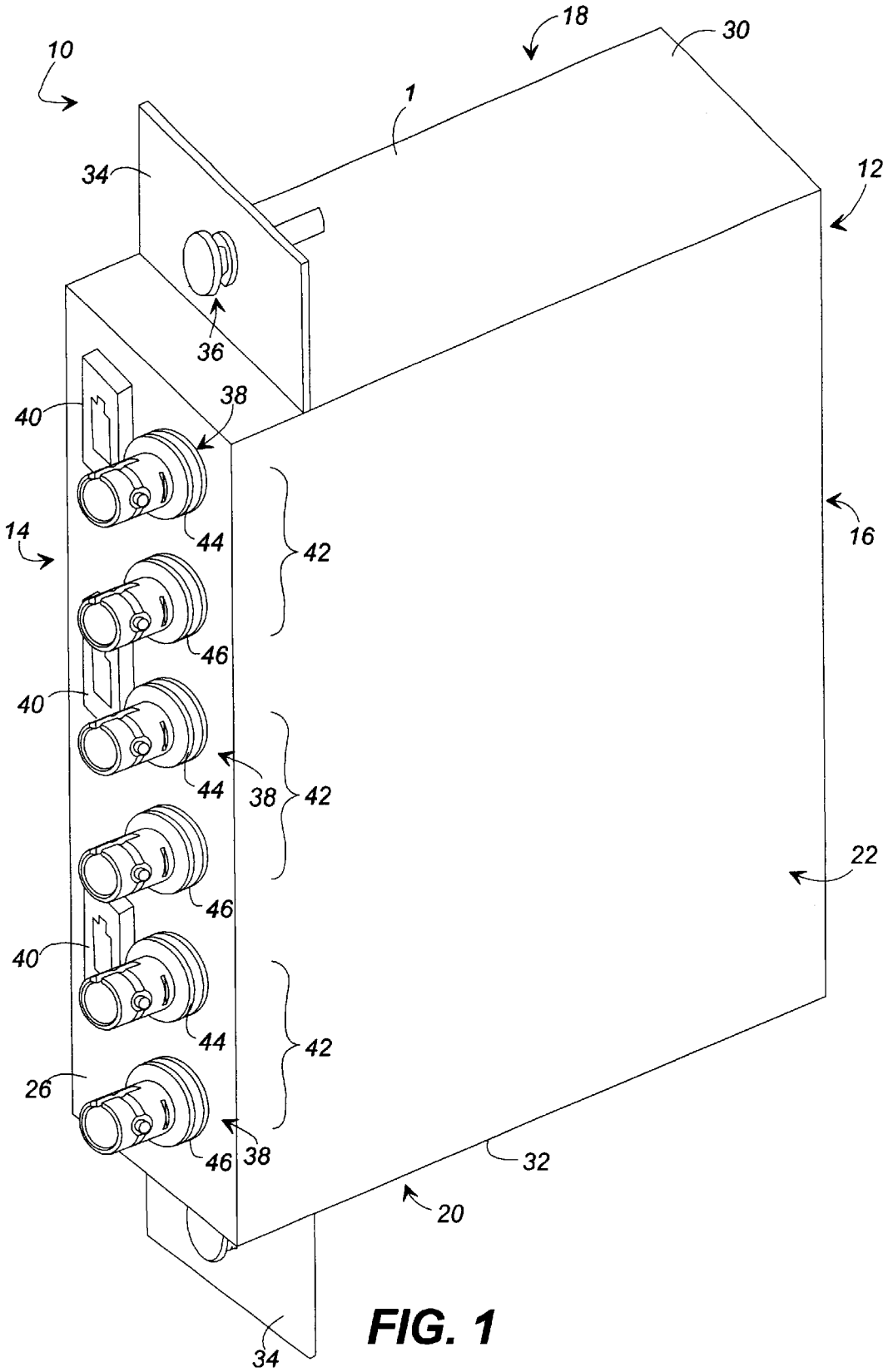

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FIG. 1

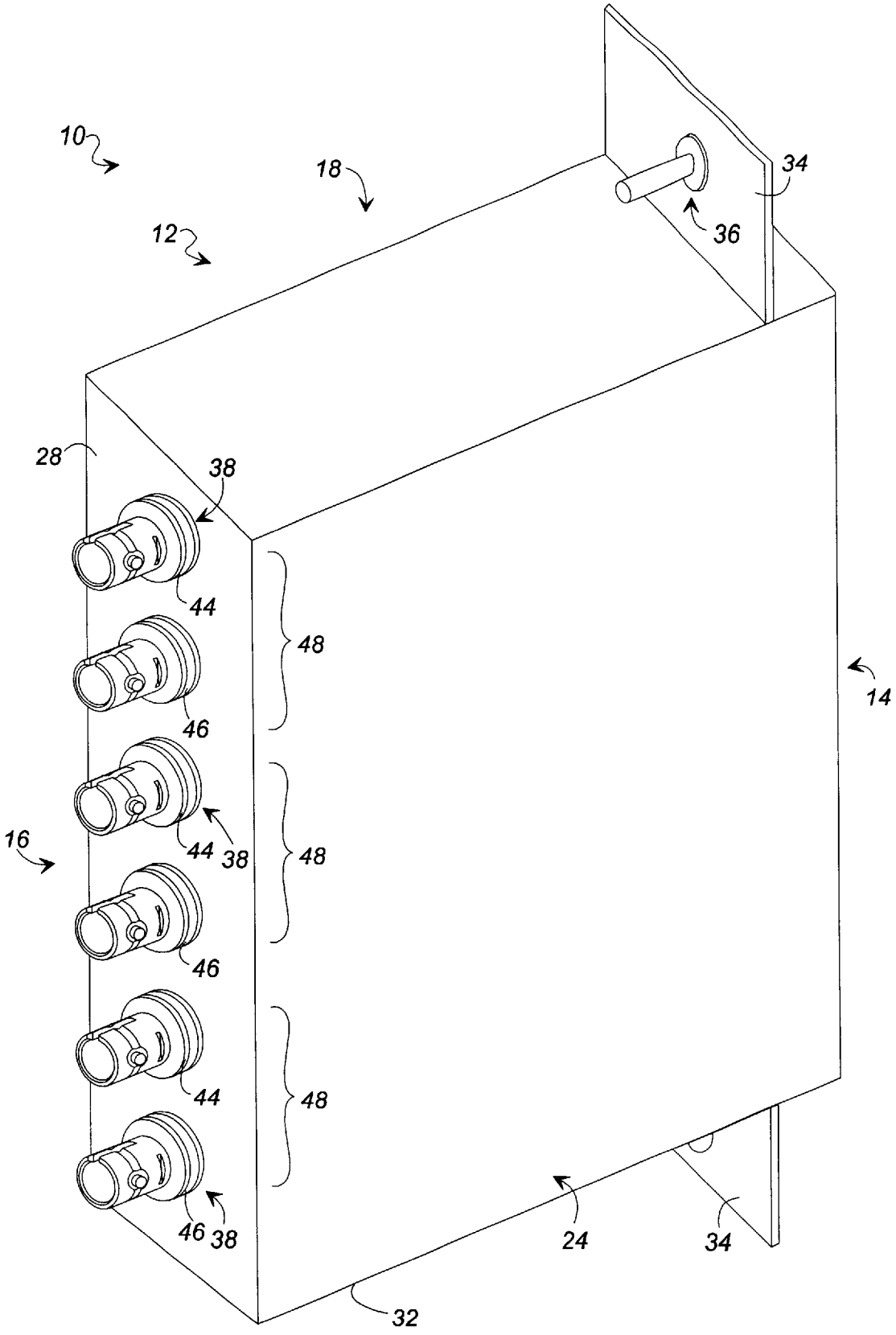

FIG. 2

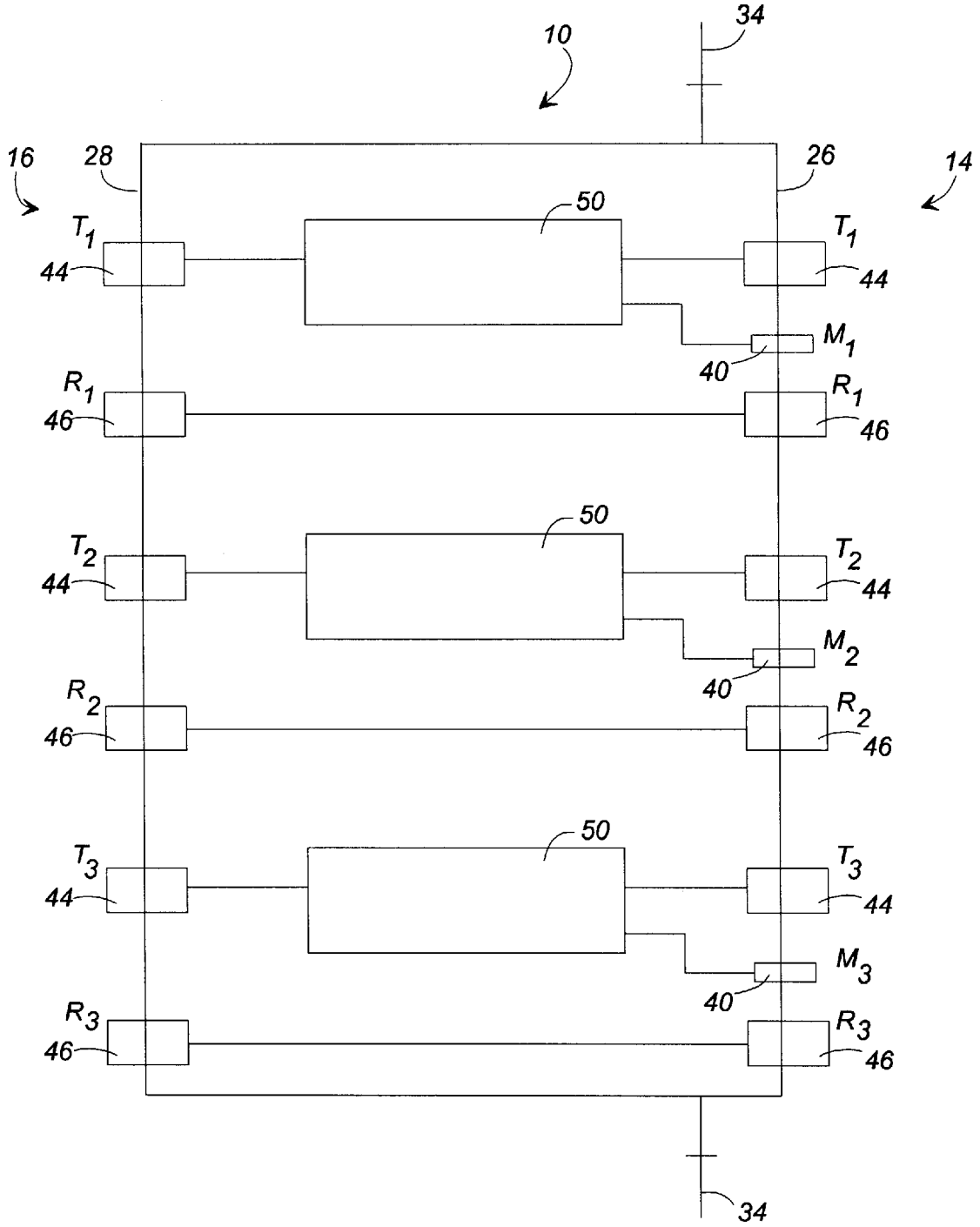

FIG. 3

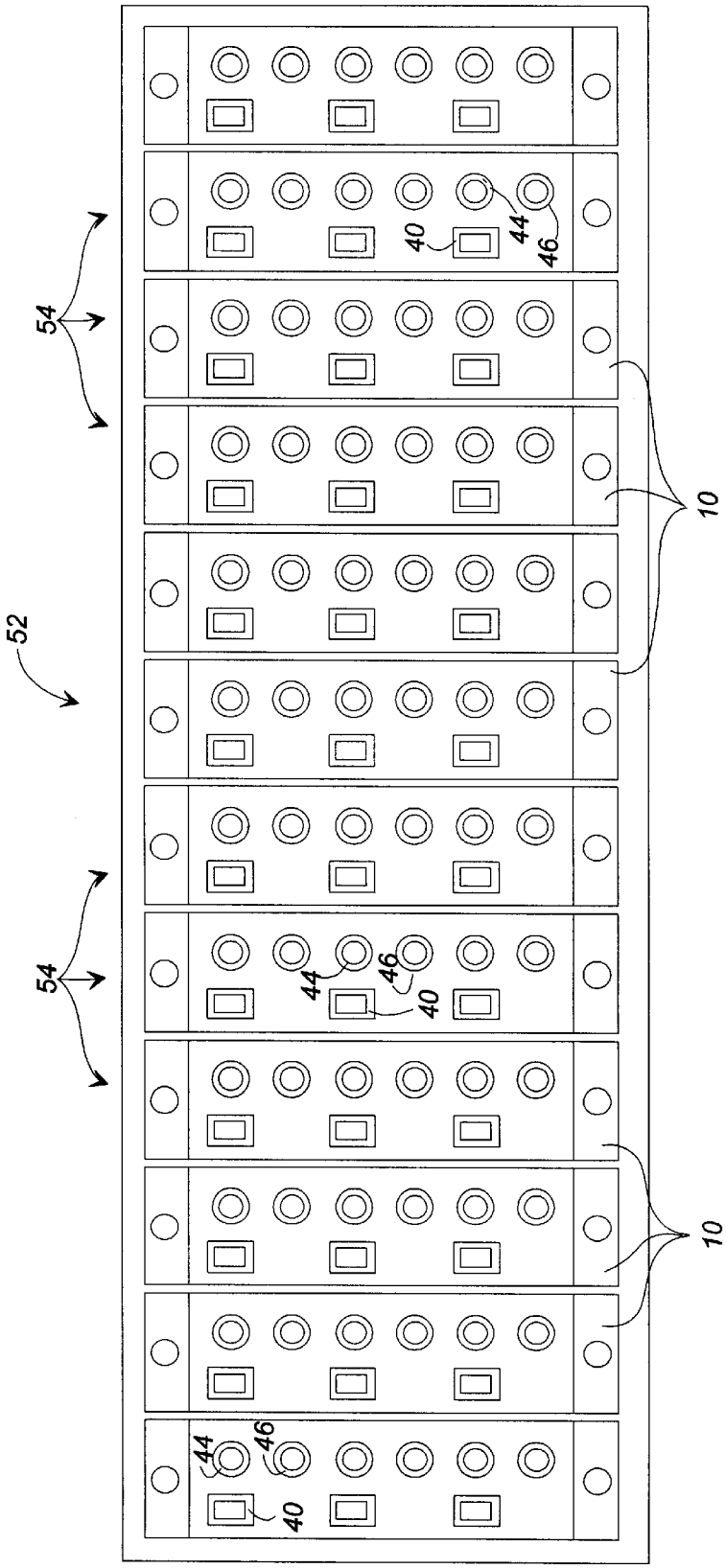

FIG. 4

CROSSCONNECT MODULE HAVING MONITORING PROVISIONS

TECHNICAL FIELD OF THE INVENTION

The present invention generally relates to a crossconnect module having monitoring provisions. More particularly, the present invention relates to a non-intrusive, passive crossconnect module that provides for transmission signal monitoring and which can be installed in a standard bay panel.

BACKGROUND OF THE INVENTION

Fiber optic peripheral equipment for cable management, cable storage, and connection capabilities are well known. Typically, this cable management, storage and connection is facilitated in bays that comprise a plurality of stacked shelves in which fiber optic crossconnect panels are installed. Within each panel is a plurality of stations that are adapted to receive crossconnect modules that facilitate the various optical fiber connections. Each module normally comprises a plurality of "patch throughs" that merely consist of a plurality of connectors installed in a panel that are used to connect two optical fiber connectors so that the pieces of equipment connected to these fibers can transmit and receive signals to and from each other. Several such connections may be made between a transmitter, e.g. a core network, of the signal and the receiver, e.g. a customer premise.

With the multiplicity of fiber optical connections made along any given transmission path, several transmission problems can arise. One problem involves locating a fault point in situations where transmission losses are occurring. For example, if a customer notifies a signal provider that a signal being transmitted to the customer is not arriving or is being corrupted in some manner, the provider normally must determine where along the transmission path the problem is arising. This typically requires checking the output of each connection point along the transmission path to ensure that an uncorrupted signal is being sent from each connection point. In this manner, the problem area along the transmission path can be isolated and the problem remedied.

Separate monitoring devices are usually used to evaluate the output signals to check their integrity. To conduct such an evaluation, the circuit in which the signal is being transmitted normally must be interrupted and several jumper cables attached between the connection point and the monitoring device. At this point, a diagnostic test can be performed to judge transmission performance. Although effective in identifying the problem area, this method is disruptive because the customer's signal must first be interrupted when connecting the device. In addition, this method creates difficulty in that, due to the several jumper connections presently required, it is easy for the technician to confuse the various jumpers and connectors and, therefore, make an erroneous assessment of the transmission performance based upon the wrong signal. Moreover, the customer often must incur additional expense to provide for additional equipment space (e.g., panel space or floor space) for the devices used to check the signals.

From the foregoing, it can be appreciated that it would be desirable to have a monitoring point that is integrated into transmission circuits so that signal interruption and technician confusion can be avoided. Furthermore, it would be desirable to have such a monitoring point integrated into crossconnect panels so that no fiber optic density is lost through the provision of the monitoring point.

SUMMARY OF THE INVENTION

The present disclosure relates to a crossconnect module

crossconnect panel. In one embodiment, the module includes first and second transmitting connectors connected to each other with a first transmission path and first and second receiving connectors connected to each other with a second transmission path. Further included is a monitoring connector, a signal splitter disposed within the housing along one of the first and second transmission paths, and a third transmission path extending from the signal splitter to the monitoring connector.

In use, a portion of a signal transmitted along one of the first and second transmission paths is diverted by the signal splitter to the third transmission path so that the diverted portion of the signal can be monitored with a monitoring device that can, for example, comprise a conventional monitoring device via the monitoring connector to determine whether a uncorrupted signal is being sent through the module. In one arrangement, the signal splitter is disposed along the first transmission path such that the monitored signal is an output signal.

The features and advantages of the invention will become apparent upon reading the following specification, when taken in conjunction with the accompanying drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

The invention can be better understood with reference to the following drawings. The components in the drawings are not necessarily to scale, emphasis instead being placed upon clearly illustrating the principles of the present invention.

FIG. **1** is a front perspective view of an embodiment of a crossconnect module constructed in accordance with the present invention.

FIG. **2** is a rear perspective view of the crossconnect module shown in FIG. **1**.

FIG. **3** is a schematic diagram of the crossconnect module shown in FIGS. **1** and **2**.

FIG. **4** is a schematic view of a bay panel provided with a plurality of the crossconnect modules shown in FIG. **1**–**3**.

DETAILED DESCRIPTION OF THE DRAWINGS

Referring now in more detail to the drawings, in which like numerals indicate corresponding parts throughout the several views, FIGS. **1** and **2** illustrate an embodiment of a crossconnect module **10** constructed in accordance with the present invention. As is shown in these figures, the crossconnect module **10** comprises a housing **12** that typically is constructed of a sheet metal material. The housing **12** generally comprises a front side **14**, a rear side **16**, a top side **18**, a bottom side **20**, and opposed lateral sides **22** and **24**. Each of these sides normally includes a panel. In particular, the front side **14** includes a front panel **26**, the rear side **16** includes a rear panel **28**, the top side **18** includes a top panel **30**, and the bottom side **20** includes a bottom panel **32**. Extending outwardly from the top and bottom panels **30** and **32** are mounting flanges **34**. These mounting flanges **34** are used to mount the bay module **10** into a bay panel (see FIG. **4**). This mounting is facilitated with mounting fasteners **36** which extend through the mounting flanges **34**. Typically, these mounting fasteners **36** comprise plastic quick-release fasteners, which are well known fasteners.

As indicated in FIG. **1**, a plurality of fiber optic connectors are mounted in the front panel **26** of the module **10**. More specifically, the front panel **26** includes a plurality of circuit connectors **38** and monitoring connectors **40**. In the example embodiment disclosed herein, the circuit connectors **38** are

said second transmitting connectors are located on a rear side of said housing.

3. The module of claim **1**, wherein said first receiving connectors are located on a front side of said housing and said second receiving connectors are located on a rear side of said housing.

4. The module of claim **1**, wherein said monitoring connectors are located on a front side of said housing.

5. The module of claim **1**, wherein the signal splitters divert approximately 10% of the signals to the monitoring connectors.

6. The module of claim **1**, wherein said housing comprises at least one mounting flange that includes a fastener with which said module is mountable within the panel.

7. A crossconnect panel, comprising:

a plurality of panel stations each adapted to receive a crossconnect module; and

at least one crossconnect module housed within one of said panel stations, the module including

a housing,

first and second transmitting connectors mounted to said housing and being connected to each other via a first transmission path,

first and second receiving connectors mounted to said housing and being connected to each other via a second transmission path,

a monitoring connector mounted to said housing,

a signal splitter disposed within said housing along one of said first and second transmission paths; and

a third transmission path extending from said signal splitter to said monitoring connector.

8. The module of claim **7**, wherein said signal splitter is disposed along said first transmission path.

9. A method of monitoring a transmission signal, comprising the steps of:

providing a crossconnect module having multiple circuits that carry multiple output signals and a signal splitting device for each circuit;

arranging the crossconnect module such that a portion of each output signal transmitted through the module is diverted by a signal splitting device to one of multiple monitoring connectors of the crossconnect module;

inserting the crossconnect module in a crossconnect panel; and

transmitting multiple output signals through said module and monitoring these signals via the monitoring connectors.

10. The method of claim **9**, wherein the crossconnect module is arranged so that an output signal is diverted by the signal splitting device.

* * * * *