UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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KYOCERA CORPORATION, and
MOTOROLA MOBILITY LLC
Petitioners,
v.

SOFTVIEW LLC
Patent Owner.

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PETITIONERS' CONSOLIDATED CLAIM CONSTRUCTION BRIEF

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CASE IPR2013-00007
CASE IPR2013-00256
Patent 7,461,353

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CASE IPR2013-00004
CASE IPR2013-00257
Patent 7,831,826

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I. INTRODUCTION

In its Oppositions, Patent Owner argued,

> Pad++ does not preserve "the original page layout, functionality and design" of a Web page's HTML-based content even upon initial rendering, much less when panning and zooming. . . . ***Simply maintaining the layout after a web page has been initially rendered does not meet these claim limitations if that initial rendering does not preserve the original layout, functionality, and design of the HTML content***.

Opp. at 19-20 (emphasis added). This is a claim construction argument, which Patent Owner relies upon to distinguish Pad++ from the claims-at-issue. *Id*. at 20-21, citing Reinman Decl. ¶¶ 22-24. Patent Owner's newly proposed construction was surprising for three reasons: (1) it is flatly contradicted by the definition the inventors gave to the examiner during prosecution; (2) it is inconsistent with how one skilled in the art would understand the phrase; and (3) it is inconsistent with the context in which this limitation appears in the claims.

II. CLAIM CONSTRUCTION

The limitation "preserv[] the original page layout . . ." is not found anywhere in the specification of either the '353 or '926 patents. It was added for the first time in an amendment dated May 20, 2008, during prosecution of the '353 patent. '353 Patent File History, IPR2013-00007, PX 1002 at 144-45. In that amendment, Patent Owner explicitly defined the meaning of the phrase:

> "preserving the [overall layout, functionality, and] design" of the content . . . refers to preserving the design ***as interpreted by the browser*** while at different zoom levels and panned views, as opposed to rendering the content identically to how it is rendered by a particular desktop browser that may interpret the page design differently.

Id. at 233 (emphasis added). The same definition was supplied by Patent Owner in the prosecution of the '926 patent. IPR2013-00004, PX 1002 at 34-35 ("[T]he page layout (to be preserved) is determined as interpreted by rendering/layout engine components, rather than as a comparison to how the page might be rendered by a particular desktop browser.") and at 38 ("[P]reservation is relative to the interpretation of the page by the browser implementation itself, as opposed to preservation of the original layout, functionality and design based on some rigid construction of a 'perfect' interpretation of the page."). The inventors also made clear that variations of this phrase should be construed in the same manner. IPR 2013-00007, PX 1002 at 234-35. A full discussion of the relevant prosecution history is set forth in Petitioners' Reply Briefs and the Grimes Reply Declaration and will not be repeated here. Paper No. 28, Reply Br., at 2-5; PX 1030, Grimes Rep. Decl. ¶¶ 24-55.

In litigation, when a claim limitation not found in the specification is added during prosecution, and when the meaning of that term is explained during prosecution by the inventors, the Federal Circuit has given substantial weight to the

inventors' explanation. *E.g.*, *Sunovion Pharm., Inc. v. Teva Pharm. USA, Inc.*, __ F.3d __, 2013 WL 5356823 at *3, *4 (Fed. Cir. 2013) (term "essentially free," appeared only in the claims; "applicants repeatedly and consistently defined their claimed invention [during prosecution] to be as exhibited by Example 1;" term construed to be limited to less than 0.25% in accordance with Example 1); *Computer Docking Station Corp. v. Dell, Inc*., 519 F.3d 1366, 1374-75 (Fed. Cir. 2008) and cases cited therein.

A fortiori, in a proceeding before the PTAB, the broadest reasonable construction of a term that appears only in the claims should ***at least*** include the inventors' definition. *Cf., In re American Academy of Science-Tech Center*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (broadest reasonable construction "must be consistent with the one that those skilled in the art would reach."); *Saffran v. Johnson & Johnson*, 712 F.3d 549, 559 (Fed. Cir. 2013) (inventor's unqualified assertion during prosecution provided an "affirmative definition for the disputed term"). This is especially true where, as here, the inventors explained that their definition was consistent with the understanding of a person skilled in the art. IPR2013-00007, PX 1002 at 218-36 (explaining that the web page layout is defined by the browser, and that page layouts of the same web page by Internet Explorer 7, Netscape Navigator 9, and Mozilla Firefox 2.0 are different from one another); IPR2013-00004, PX 1002 at 23-43 (same).

In this case, the prosecution history definition is consistent with how a person skilled in the art would understand the limitation. PX 1030, Grimes Rep. Decl. ¶¶ 24-55. In fact, as explained by Dr. Grimes, the phrase "preserv[] the original page layout […]" cannot be limited to preserving a "pre-rendered page layout" because one skilled in the art would have understood that HTML code has no layout ***until*** it is processed by the rendering engine of the browser and rendered. *Id*. at ¶ 28; PX 1052, Supplemental Grimes Decl. at ¶ 9. Instead, it was well known in the art that the popular browsers of the time (Netscape Navigator, etc.) would render the same HTML-based pages differently. PX 1030, Grimes Rep. Decl. ¶ 34. For instance, Netscape Navigator for DOS and for the Macintosh used different default text fonts, Times Roman and Helvetica, respectively. *Id*.

The prosecution history definition is also supported by the context in which the "preserv[]" limitation appears. Claims 1 and 118 of the '353 patent recite the "preserv[] the original page layout . . ." phrase "defined by its original format when scaled and rendered." Similarly, claims 36, 149, and 252 recite "re-render the display . . . to enable the Web page to be browsed at various zoom levels and panned views while preserving the original page layout. . . ." The claims at issue in the '926 patent recite "preserv[] . . . original page layout, functionality and design," either "when scaled and rendered" (claim 30), or "as interpreted by a rendering engine" while zooming (claim 52). Given this context, a person skilled in the art

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