UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CARDIOCOM, LLC

Petitioner

v.

ROBERT BOSCH HEALTHCARE SYSTEMS, INC.

Patent Owner

CASE IPR2013-00451

Patent No. 7,587,469

PATENT OWNER'S MOTION FOR OBSERVATION REGARDING CROSS-EXAMINATION OF REPLY WITNESS DR. ROBERT STONE

Pursuant to the Board's January 16, 2014 Scheduling Order (Paper 24) authorizing a motion for observation regarding cross-examination of reply witness, Patent Owner Robert Bosch Healthcare Systems, Inc. ("Bosch") provides the following observations on the July 15-17, 2014 cross-examination of Petitioner Cardiocom, LLC's ("Cardiocom") reply declarant, Dr. Robert Stone:

Claim Limitations

1. In Ex. 2024, at 920:8-921:14, Dr. Stone testifies:

[Q.] Okay. So the high-level instruction or script file [in Wahlquist] is -- that would be a file of instructions to the computer; correct?
A. Computer or could include instructions to the user to be displayed by the script file.
Q. Displayed by the computer?
A. Yes.
Q. So either it's an instruction for the computer to perform an operation or an instruction for the computer to display information to the user?
A. That's correct.
Q. Okay. And similarly, if you look at the second portion you cited, Column 2, line 43 through 45.
A. Yes.
Q. That refers to the diagnostic program running on the user's computer?
A. It does.
Q. The diagnostic program on the computer initiates execution of the

script file?

A. Yes.

Q. The script file instructs the computer to execute the selected test?

A. Yes.

Q. So these are -- it's referring to instructions to the user's computer; correct?

A. That's correct.

Q. Okay. So the portion that you refer to in Wahlquist, Column 2, lines 17 through 24 and Column 2, lines 43 through 45, are instructions given to the user's computer to perform certain operations?

A. That's correct.

This is relevant to ¶ 84 of Ex. 1022, where Dr. Stone argues that Wahlquist discloses receiving a computer program with instructions as required for the "primary device" in claim 1. This is relevant because Dr. Stone admits that the portions in Wahlquist that he relies upon disclose only instructions provided to a user's computer—not instructions provided to the patient through synthesized audio transmissions as required for claim 1. *See* Ex. 1001, U.S. Patent No. 7,587,469 (" the '469 patent"), 21:13-19 ("primary device comprises a component adapted to (i) receive one or more computer programs including one or more queries, instructions or messages as a first digital file from said server, (ii) convert the first digital file into synthesized audio transmissions").

2. In Ex. 2024, at 925:9-21, Dr. Stone testifies:

[Q.] You are not saying that you have expressly set forth any opinion that quotes the language from the Claim 1 of the '469 patent converts said first digital file into synthesized audio transmissions and identifies that as being part of either Cohen or Wahlquist?
[A.] What I stated was I did not express an opinion with respect to what you just asked in the -- in the question.

This is relevant to Dr. Stone's obviousness opinions with respect to Cohen and Wahlquist (Ex. 1022 ¶¶ 50-103). This is relevant because Dr. Stone also admits that he does not set forth an opinion in his reply declaration that the combination of Cohen and Wahlquist discloses "convert[ing] the first digital file into synthesized audio transmissions" as required in claim 1. The '469 patent, 21:13-19.

Dr. Stone's Incorrect Understanding of Analogous Art

3. In Exhibit 2024, at 1142:9-24, Dr. Stone testified:

Q. Okay. And you understand that only analogous art can be considered as part of an obviousness combination?
A. No. I don't understand that.
Q. Okay. So --
A. I understand that a reasonably pertinent art can be considered as part of an obviousness consideration. That's my understanding.
Q. Okay. So in forming your opinions, you had an understanding that art that was not necessarily analogous could still be considered as part of an obviousness combination?
[A.] What I stated that I can use a reasonably pertinent reference that is not analogous is my understanding.

This is relevant to Dr. Stone's legal analysis of obviousness at ¶ 24 of Ex. 1022, his reply declaration. This is relevant because Dr. Stone applies a confused and incorrect legal standard with respect to the requirement that obviousness combinations must use analogous art. *See In re Klein,* 647 F.3d 1343, 1348 (Fed. Cir. 2011); *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004).

4. In Exhibit 2069, Dr. Stone testified:

> Q. So you're not -- sitting here today, you're not saying that Wahlquist is, quote/unquote, analogous art?
> [A.] I'm not prepared to give a -- the answer is I'm not saying that right now, yes. You're correct. I am not saying that at the moment.

Id., 1145:24-1146:5.

> Q. Wahlquist is directed to diagnosis and fixing computer problems?
> A. Certainly with regard to remote diagnosis of computer problems.
> Q. Wahlquist is not meant to monitor individuals?
> A. An individual human, no; an individual computer, yes.

Id., 864:13-20.

> Q. Okay. And you agree that Wahlquist is not meant for monitoring individual humans?
> A. I tend to agree with that, yes.

Id., 866:2-4. This is relevant to Dr. Stone's usage of Wahlquist in obviousness combinations, on pages 10 and 30 of Ex. 1008, and his incorrect legal standard set forth in Ex. 2024, at 1142:9-24. This is relevant because Dr. Stone's incorrect

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