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 IPR2013-00468

Patent No. 7,516,192

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

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Pursuant to the Board's January 28, 2014 Scheduling Order (Paper 23) 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:

<u>No Opinion as to Clams 11, 12, 29, and 30</u>

1. In Exhibit 2069, Dr. Stone testified:

> Q. So you've not set forth in your new '192 reply declaration and [*sic*, any] opinion that Wright renders obvious Claims 6, 7, 11 or 12?
> A. I have nothing here in this report.

Ex. 2069, 1223:7-10.

> Q. And you have not responded to Dr. David's arguments that Claims 29 and 30 are not obvious in light of Wright?
> A. I have not argued that or responded to that.

Id., 1243:2-5.

This testimony is relevant to Bosch's expert Dr. David opinions that Wright does not disclose the additional limitations of claims 11 and 12 of U.S. Patent No. 7,516,192 (Ex. 1001, " the '192 patent"). Ex. 2007 ¶¶ 142-146. Dr. David also opines that Wright does not disclose the additional limitations of claims 29 and 30, which are identical to claims 11 and 12, respectively. *Id.* ¶¶ 166-69. This testimony is relevant because Dr. Stone admits that, in response, he does not

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provide any opinions that Wright teaches the additional limitations of claims 11, 12, 29, and 30.

<u>Missing Claim Limitations</u>

2. In Exhibit 2069, at 1184:5-1185:7, Dr. Stone testified that the "input" Wright refers to is not an "input command" that is executed as part of a "script program" as required by claims 1 and 20. Ex. 2069, 1184:5-1185:7. This testimony is relevant to Dr. Stone's argument that Wright specifies that its scripting language must have an input command. Ex. 1022 ¶ 52. This testimony is relevant because Dr. Stone admits that the purported input command he identifies does not satisfy the claim limitations.

3. In Exhibit 2069, at 1225:14-1225:24 (emphasis added), Dr. Stone testifies:

> Q. Okay. So when you say that Wright renders Claim 17 obvious, you're relying on the -- it's because you believe that Wright teaches a human user using a computer program to generate a generic script program?
> A. Yes.
> <u>Q. Okay. And that both the human user and the computer program are part of what is necessary to satisfy the limitations of Claim 17?</u>
> <u>[A.] Yes.</u>

This testimony is relevant to Dr. Stone's analysis with respect to claim 17. This testimony is relevant because Dr. Stone testifies that the claimed "script generator"

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can be satisfied by the combination of a human and a computer program. It is only through this attenuated reading of "script generator" that Dr. Stone argues the limitation is disclosed in Wright. Ex. 1022 ¶ 113.

4. In Exhibit 2069, at 1240:25-1241:20, Dr. Stone testifies that the new field command described in the Wright patent does not meet the limitations of Claim 19 of the '192 patent. This testimony is relevant to Dr. Stone's argument that, with respect to claim 19, the "New Field" command in Wright discloses the claimed "insert commands" that must be part of the generic script program. Ex. 1022 ¶ 117. This testimony is relevant because Dr. Stone admits that the "New Field" command he identifies in fact does not meet the limitations of claim 19.

Dr. Stone's Incorrect Understanding of Analogous Art

5. In Exhibit 2069, 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.

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This is relevant to Dr. Stone's legal analysis of obviousness at ¶ 28 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).

6. In Exhibit 2069, at 1145:24-1146:5, 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.

See also 864:13-20, 866:2-4. This is relevant to Dr. Stone's usage of Wahlquist in obviousness combinations, on page 58-78 of Ex. 1008, and his incorrect legal standard set forth in Exhibit 2069 at 1142:9-24. This is relevant because Dr. Stone's incorrect standard explains his usage of Wahlquist in prior art combinations despite his testimony that Wahlquist is not analogous art.

7. In Exhibit 2069, at 955:24-956:12, Dr. Stone testified that in considering the field of endeavor of a patent, he does not limit his analysis to the claimed invention, and instead considered the entire disclosure of the patent. *See also id.* 1140:6-23 (Dr. Stone "applied the same legal principles [] with respect to the '192 patent" as for the other patents, including the '186 patent); 959:25-960:4. This is relevant to Dr. Stone's argument at pages 58-78 of Ex. 1008 that Wahlquist

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