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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 7,516,192

**PETITIONER'S RESPONSE TO 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 22), Petitioner Cardiocom, LLC ("Cardiocom") provides the following response to Patent Owner's Motion For Observation Regarding Cross-Examination of Reply Witness Robert T. Stone (Paper 58).

As the Board stated in this action, the purpose of observations is to "draw the Board's attention to relevant cross-examination testimony of a reply witness, since no further substantive paper is permitted after the reply." Paper 22 at 4. Patent Owner, however, improperly uses the observations as a vehicle to supplement the arguments in its Patent Owner Response. Cardiocom objects to this misuse of the observations. *See* PTAB Trial Practice Guide, 77 Fed. Reg. 48756, 48768 ("An observation (or response) is not an opportunity to raise new issues, re-argue issues, or pursue objections.").

Further, as discussed in the individual responses below, Patent Owner's observations either are redundant in view of Dr. Stone's Reply Declaration, or reach unwarranted inferences from the cited testimony of Dr. Stone in view of other testimony of Dr. Stone cited herein that has either been omitted or ignored by Patent Owner.

Opinion as to Claims 11, 12, 29 and 30

1. Response to Observation 1 – Patent Owner's observation is flat wrong in claiming that Dr. David's reply declaration does not provide any opinions that

Wright teaches the additional limitations of dependent claims 11, 12, 29 and 30 of the '192 patent. Dr. Stone's reply declaration (Ex. 1022) specifically states in paragraphs 161-162 that Wright in combination with Goodman teaches all of the limitations of claim 11, including that Wright teaches the additional limitation of "the personal data related to the individual is stored in a look-up table." Similarly, paragraph 163 of Dr. Stone's reply declaration states that the limitations of claim 12 are taught by Wright and Goodman. With respect to claims 29-30, Patent Owner acknowledges that those claims teach the same additional limitations as claims 11-12, respectively. Paper 58 at 1. Paragraphs 180-181 of Dr. Stone's reply declaration contain his opinion that the limitations of claims 29-30 are taught by Goodman and Wright and incorporates by reference his earlier analysis of how the claim limitations are taught, including his analysis of the limitations of claims 11-12 in paragraphs 161-163 of his declaration. Patent Owner is aware of all of these paragraphs in Dr. Stone's reply declaration, even if he did not specifically cite them during his deposition.

Missing Claim Limitations

2. Response to Observation 2 – Patent Owner's observation fails to cite to the entirety of Dr. Stone's testimony on the "input command" required by claims 1 and 20 of the '192 patent. Dr. Stone testified that one of ordinary skill in the art would understand Wright to teach the use of an input command in script

programs, even if the information in Table 3 of Wright is not specifically about input commands. In Ex. 2069, at 1441:13-1443:6, Dr. Stone testified:

Q. In paragraph 97, there's a sentence that starts with the page -- right on page 45 that starts furthermore. It runs over on page 46. Do you see that?

A. I see that.

Q. What's your understanding of what that sentence means?

MR. de BLANK: Objection to the extent it's soliciting opinions beyond that set forth in the report.

A: Wright teaches that scripts are responsible for walking the user through the entire form and providing interactive feedback. When you're walking through the -- the user through a form, you're walking him up to the point where you're waiting for input from the user, and you are also displaying things to the user as he walks through the form. He's not -- not necessarily especially with a smaller device that whole form might not appear on a single page, so it's being fed information displayed to him, and he is providing inputs back as a result of how the script is giving commands and being interactive.

BY MR. BLAKE: Q. What would one of ordinary skill in the art do to implement a system such that it would be about to receive interactive feedback?

MR. de BLANK: Objection to the extent it's outside the scope of the report and outside the scope of the cross-examination.

A: Every software engineer would look to the commands for the particular script language and see which ones cause a message to be displayed and which ones would allow an input from the various types of devices, whether it's a touch screen, whether it's a mouse, whether it's keyboard or whether it's buttons, soft keys at the side of a display.

BY MR. BLAKE: Q. Would one of ordinary skill in the art know how to implement the input command of Claim 1 of the '192 patent as of the time of the alleged invention in that patent?

MR. de BLANK: Same objections.

A: Certainly.

See also Ex. 2069 at 1439:16-1440:25; Ex. 1022 at ¶¶ 96-98.

3. Response to Observation 3 – Patent Owner’s observation mischaracterizes Dr. Stone’s deposition testimony about the “script generator for generating the generic script programs” recited in claim 17 of the '192 patent. Dr. Stone testified that Wright discloses a computerized forms creation component that renders obvious the claimed script generator of claim 17. In Ex. 2069, at 1457:14-1458:21, Dr. Stone testified:

BY MR. BLAKE: Q. In paragraph 113 there’s a reference to a forms creation program. Do you see that?

A: That’s correct.

Q. What do you understand that to mean?

MR. de BLANK: Sorry. Objection. Outside the -- seeking an opinion outside the scope of the report.

A: Wright’s forms creation program was a program that was written in script according to Wright in his disclosure, and it was utilized to create customized forms which incorporated script programs within those customized forms.

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