

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE INC.,  
SAMSUNG ELECTRONICS AMERICA, INC. AND SAMSUNG  
ELECTRONICS CO., LTD.  
Petitioners

v.

MICROGRAFX, LLC  
Patent Owner

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Case IPR2014-00532  
Patent 5,959,633

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**PETITIONER'S REPLY TO PATENT OWNER'S MOTION FOR  
OBSERVATIONS REGARDING CROSS EXAMINATION**

The purpose of observations is to “draw the Board’s attention to relevant cross-examination testimony of a reply witness, because no further substantive paper is permitted after the reply.” See Scheduling Order, Paper 12 at 4. By contrast, Micrografx improperly uses its observations as a vehicle to supplement its Patent Owner Response. Petitioner objects to this misuse. 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.”). Patent Owner’s observations also include unsupported attorney argument, mischaracterize Dr. Lastra’s testimony, and omit other relevant portions of Dr. Lastra’s testimony.

### **Response to Observation #1**

In the last sentence of Observation #1, Micrografx mischaracterizes Dr. Lastra’s testimony regarding this point by asserting that Dr. Lastra’s testimony indicates that “communications between user code and graphical objects in Walton must be handled by the VSE system.” PO Mtn for Obs. at p.1; *but see* Ex. 2008 at p. 10, Ins. 17-25 (“user software may be used to access the graphical object, and by providing the behavior function name and the desired behavior state, the graphical object may be manipulated on the display screen from the user application code); p. 81, ln. 23 to p. 82, ln. 19 (indicating that communications during the “run mode” are not necessarily the same as “communication operations that are performed during the edit mode” and that he “wouldn’t expect them to be

the same, because at run time, the user code is generating events; whereas in edit mode, it might be the actual designer.”). These additional portions of Dr. Lastra’s testimony—when understood in the full context—are relevant because (1) they indicate Walton emphasizes the communication between the user software and the graphical objects, not the means of communication, and (2) they note differences between the edit and run modes of Walton.

### **Response to Observation #2**

Micrografx mischaracterizes Dr. Lastra’s testimony in Observation #2. The majority of the quoted portion of the deposition transcript is taken from statements made by Micrografx’s attorney rather than Dr. Lastra. See Ex. 2008 at p. 44, Ins. 11-19.

Furthermore, Micrografx ignored the full context of Dr. Lastra’s testimony and failed to cite to other portions of the testimony in which Dr. Lastra clarified that “communications during the run mode” are not necessarily the same as “communication operations that are performed during the edit mode” and that he “wouldn’t expect them to be the same, because at run time, the user code is generating events; whereas in edit mode, it might be the actual designer.” *Id.* at p. 81, ln. 23 to p. 82, ln. 19. These additional portions of Dr. Lastra’s testimony—when understood in the full context—are relevant because they indicate the communication routines described for Walton’s “edit mode” do not necessarily limit or apply to Walton’s “run mode.” Furthermore, in the last sentence of Observation #2, Micrografx mischaracterizes Dr. Lastra’s testimony regarding this point by arguing that Dr.

Lastra's testimony indicates "communications between user code and graphical objects in Walton must be handled by the VSE system"—an attorney argument that is inconsistent with the full context of Dr. Lastra's testimony. PO Mtn for Obs. at p.2; *but see* Ex. 2008 at p. 10, Ins. 17-25; p. 81, In. 23 to p. 82, In. 19.

### **Response to Observation #3**

Micrografx mischaracterizes Dr. Lastra's testimony in Observation #3 by arguing that Dr. Lastra's testimony indicates that "Petitioners are now relying on the 'Example Graphics Program' of Eick as an 'external shape stored outside the computer program' when they originally relied on the 'Example Graphics Program' of Eick as the 'computer program.'" PO Mtn for Obs. at p.3. However, Micrografx ignored the full context of Dr. Lastra's testimony and failed to cite to other portions of Dr. Lastra's Deposition in which Micrografx's attorney asked "[t]his example graphics program is FloatDraw. Correct?" and Dr. Lastra replied "[w]ell, that's not exactly correct. That sample program uses FloatDraw . . . [t]he program includes more than FloatDraw." Ex. 2008 at p. 50, In. 23 to p. 51, In. 5. Dr. Lastra then stated that "a person of ordinary skill in the art would know that you can take FloatDraw, put it in a library – the library is just a container for functions or classes – and make it a library class" and that "a person of ordinary skill in the art would know that FloatDraw can – is a class, and can be made into its own library, and that library can be linked as a DLL." *Id.* at p. 54, Ins. 4-8; p. 58, Ins. 10-13. In the full context, these additional portions of Dr. Lastra's

testimony are relevant in that they show that Dr. Lastra did not rely on the “example graphics program” of Eick as equating to both the “external shape stored outside the computer program” and the “computer program” of claim 1.

#### **Response to Observation #4**

Micrografx mischaracterizes Dr. Lastra’s testimony in Observation #4 by ignoring the full context of Dr. Lastra’s testimony and failing to cite to portions of the deposition transcript in which Dr. Lastra indicated that his second declaration did not “seek to identify every single instance in which [he] disagreed with something that Mr. Kitchen said in his declaration.” Ex. 2008 at p. 80, Ins, 7-16. Dr. Lastra then clarified that “[j]ust the fact that I didn’t write about it doesn’t mean that I agreed with it” and that in his second declaration he “stuck to the main points.” *Id.* at p. 81, Ins. 8-14. Micrografx therefore misrepresents the record with inaccurate attorney argument that “Petitioners’ expert does not dispute Patent Owner’s assertion that Eick’s library classes do not contain drawing capability.” PO Mtn for Obs. at p.4. Dr. Lastra did in fact dispute this contention by Mr. Kitchen, stating that “looking at VzDrawer which does contain a bunch of drawing routines – draw point, draw line – they’re all in-line functions.” Ex. 2008 at p. 64, Ins. 1-3. These additional portions of Dr. Lastra’s testimony are relevant because they indicate that Dr. Lastra does not agree with every statement by Mr. Kitchen which was not specifically addressed in Dr. Lastra’s

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