

UNITED STATES PATENT TRIAL AND APPEAL BOARD
BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEBASTO ROOF SYSTEMS, INC.

Petitioner

V.

UUSI, LLC

Patent Owner

Case IPR2014-00648

Patent 8,217,612

Case IPR2014-00649

Patent 7,548,037

Case IPR2014-00650

Patent 7,579,802

Deposition of Dr. Mark Ehsani

March 14th, 2015

8:07 a.m.

Reported By:
KELLY BRYANT
Job No: 38004

206	<p>1 ORAL AND VIDEOTAPED DEPOSITION OF DR. MARK</p> <p>2 EHSANI, a witness at the instance of the Petitioner, and</p> <p>3 duly sworn, taken in above-styled and numbered cause on</p> <p>4 the March 14, 2015, before Kelly Bryant, CSR, in and for</p> <p>5 the State of Texas, reported by machine shorthand.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	208	<p>1 I-N-D-E-X</p> <p>2 Page</p> <p>2 Appearances..... 207</p> <p>3 Court Reporter's Certificate..... 389</p> <p>4 DR. MARK EHSANI</p> <p>5 DIRECT EXAMINATION BY MR. SANDERS..... 210</p> <p>6 CROSS-EXAMINATION BY MR. KESKAR..... 307</p> <p>7 REDIRECT EXAMINATION BY MR. SANDERS..... 372</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 NO. DESCRIPTION page</p> <p>11 Exhibit 3 Patent Number 7548037 the '037 Patent.... 214</p> <p>12 Exhibit 1004 '037 Patent Owner's Preliminary Response.. 237</p> <p>13 Exhibit 2003 Prosecution history of the '037..... 241</p> <p>14 Exhibit 4 '037 Declaration In Support Of..... 259</p> <p>15 Exhibit 2015 '037 Patent Figure 3C..... 268</p> <p>16 Exhibit 2016 649 IPR with '037 Patent..... 268</p> <p>17 Exhibit 5 1649 IPR Patent..... 273</p> <p>18 Exhibit 1008 649 IPR for the '037 Patent..... 361</p> <p>19 Exhibit 6 IPR 648 to '612 Patent..... 373</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
207	<p>1 A-P-P-E-A-R-A-N-C-E-S</p> <p>2 FOR THE PETITIONER:</p> <p>3</p> <p>4 Goodwin Procter</p> <p>5 Exchange Place, 53 State Street</p> <p>6 Boston, MA 02109</p> <p>7 BY: CHARLES H. SANDERS, ESQ.</p> <p>8 csanders@goodwinprocter.com</p> <p>9 FOR THE PATENT OWNER:</p> <p>10</p> <p>11 Harness, Dickey & Pierce</p> <p>12 5445 Corporate Drive</p> <p>13 Suite 200</p> <p>14 Troy, MI 48098</p> <p>15 BY: HEMANT M. KESKAR, ESQ.</p> <p>16 hkeskar@hdp.com</p> <p>17 ALSO PRESENT:</p> <p>18</p> <p>19 Daniel Valentine, Videographer</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	209	<p>1 P R O C E E D I N G S</p> <p>2 (March 14, 2015)</p> <p>3 VIDEOGRAPHER: This begins the videotaped</p> <p>4 deposition of Mark Ehsani, In the Matter of Webasto Roof</p> <p>5 Systems, Inc., versus UUSI, LLC --</p> <p>6 MR. SANDERS: Why don't we not start, we</p> <p>7 need the official exhibits. I just noticed there is no</p> <p>8 paper out.</p> <p>9 Thank you. Sorry about that.</p> <p>10 VIDEOGRAPHER: In the Matter of Webasto Roof</p> <p>11 Systems, Inc., versus UUSI, LLC, in the U.S. Patent</p> <p>12 Office court. This deposition is being held at</p> <p>13 Residence Inn by Marriott at 720 University Drive East,</p> <p>14 College Station, Texas 77840.</p> <p>15 My name is Daniel Valentine from the firm of</p> <p>16 David Feldman Worldwide, and I am a legal video</p> <p>17 specialist. The court reporter is Kelly Bryant, in</p> <p>18 association with David Feldman Worldwide.</p> <p>19 Will counsel please introduce themselves for</p> <p>20 the record?</p> <p>21 MR. SANDERS: Charles Sanders, at Goodwin</p> <p>22 Procter, for the petitioner, Webasto Roof Systems, Inc.</p> <p>23 MR. KESKAR: Hemant Keskar, Harness & Dickey</p> <p>24 & Pierce, for the patent owner, UUSI, LLC.</p> <p>25 VIDEOGRAPHER: And will the court reporter</p>

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<p>1 please swear in the witness? 2 (Witness sworn) 3 VIDEOGRAPHER: We're now on the record at 4 8:07 a.m. 5 DR. MARK EHSANI, 6 having been first duly sworn, testified as follows: 7 DIRECT EXAMINATION 8 BY MR. SANDERS: 9 Q. And just to be clear, Dr. Eshani, you were here 10 yesterday. You understand that this is Day 2 of your 11 deposition? 12 A. That is correct. 13 Q. All right. I had a couple of questions about 14 your testimony yesterday. We were discussing at the end 15 of the day the '037 patent, and you directed me to 16 Columns 13 and 14 in response to one of my questions. 17 You read a sentence in Column 13, Line 46, that 18 begins "unique software algorithms." I'll give you a 19 minute to find it. 20 A. What line again? 21 Q. Line 46 at Column 13. 22 A. Okay. 23 Q. My question is: Do you believe that the -- those 24 unique software algorithms were commercially available? 25 A. As I recall, the question was, is there any</p>	<p>1 to the attention of the examiner all the prior art that 2 is relevant and sort out the distinction between his or 3 her patent and the prior art. 4 And the -- the U.S. examiner will also 5 independently, through his own resources and expertise, 6 bring to bear other prior art, and that going through 7 that exercise, which is rather rigorous, produces a 8 fairly substantial prosecution history and -- and record 9 and most often modification and -- and settlement on -- 10 on specific claims -- claims. 11 Through that laborious process, the patent is 12 finally issued, and it is presumed to be valid, unless 13 otherwise legally established. 14 Q. And did you apply what you just mentioned in your 15 prior answer for purposes of your analysis in this 16 proceeding? 17 A. Yes, sir. 18 Q. Focusing back on the '037 patent -- and we 19 discussed some of these issues with regard to the '612, 20 '802 patents yesterday, and I just want to see whether 21 the answers are any different for the '037. 22 Does the '037 patent -- excuse me. 23 The '037 patent does not disclose the minimum 24 amount of resistive force that would be detected as an 25 obstacle, correct?</p>
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<p>1 mention of software or techniques to calculate the K 2 waiting factors of the algorithms. That's the question 3 I was addressing. And I showed you instructions and 4 directions and guidances that the patent gives to 5 someone of ordinary skill in the art to figure that out. 6 Now, with that understanding, what is your 7 question? 8 Q. Yes, sir. Thank you for not answering my 9 question. 10 You need to be careful, Dr. Ehsani, listen 11 carefully to my questions and answer my questions. You 12 have other speeches to make, you can make them in 13 response to questions on redirect. So please listen 14 carefully, Dr. Ehsani. 15 Do you believe that the unique software 16 algorithms residing in Line 46 of Column 13 were 17 commercially available? 18 A. Yes, sir. 19 Q. Based on the fact that the claims of Nartron's 20 patents were issued by the U.S. Patent Office, did you 21 believe that a presumption of validity applied for the 22 purposes of your analysis? 23 A. That's my understanding that U.S. Patent Office 24 is a reliable source. It does due diligence with the 25 help of the inventor. The inventor is obliged to bring</p>	<p>1 A. Are you talking about in terms of Newton's? 2 Q. In terms of Newton's or some other measure of 3 force? 4 A. You mean some other units of -- of force, 5 physical force. 6 Q. Correct. 7 A. I don't recall. I'd have to look at it. I 8 wouldn't be surprised if it did, but it is totally 9 irrelevant to the gist of the gist of the patent. 10 Patents don't -- they give you a method and apparatus, 11 and that depends on the application of the user. 12 It has -- it is not something that neither the 13 patent -- patentee nor I would consider, as an expert 14 would consider relevant to the -- to the significance of 15 the patent or its claims. 16 Q. The '037 patent does not disclose use of any 17 systems or methods set forth in the patent to meet any 18 regulatory requirements, correct? 19 A. I have to, again, refresh my memory. It seems 20 like in the preamble, it does acknowledge the existence 21 of -- the existence or forthcoming regulatory 22 constraints that it attempts to be capable of -- of -- 23 of meeting. 24 Q. You mentioned "preamble." Are -- are you 25 referring to the discussion of the National Highway</p>

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<p>1 Traffic Safety Administration's Standard 118 in the</p> <p>2 background section of the '037 patent?</p> <p>3 A. Among others. You -- those are the examples I</p> <p>4 had in mind.</p> <p>5 Q. Now, as I think you suggest in your prior answer,</p> <p>6 but correct me if I don't have this correct, the '037</p> <p>7 patent never states that any of the systems or methods</p> <p>8 disclosed therein will satisfy that standard?</p> <p>9 A. Is that a statement or a question?</p> <p>10 Q. I'll let you confirm for me whether or not that</p> <p>11 is correct?</p> <p>12 A. My belief, as an expert, is that this patent is</p> <p>13 capable of meeting those standards. That is the very</p> <p>14 gist and purpose of this patent to -- to meet or exceed</p> <p>15 the standards that would be established or applied at</p> <p>16 the time or in the near future to that time.</p> <p>17 That is the very essence of this patent, the</p> <p>18 capability of meeting very stringent hard and soft</p> <p>19 obstacle detection of windows on similar objects.</p> <p>20 Q. And what evidence, if any, did you consider that</p> <p>21 the systems or methods disclosed in the '037 patent can,</p> <p>22 in fact, satisfy those standards?</p> <p>23 A. The specification of the patent is my evidence.</p> <p>24 Q. Does the '037 patent distinguish between a fully</p> <p>25 opened window that is frozen due to temperature and a</p>	<p>1 the '037 patent.</p> <p>2 This is the Declaration that you signed in</p> <p>3 connection with the '037 patent, correct?</p> <p>4 A. It appears that way.</p> <p>5 Q. And I'd like to direct your attention to Page 28,</p> <p>6 and you see there on Page 28, excuse me, of</p> <p>7 Exhibit 2003, in the '649 IPR, that you have a heading</p> <p>8 for Claim 13.</p> <p>9 A. I see that.</p> <p>10 Q. In paragraph 52, in the first sentence, you refer</p> <p>11 to the claim limitation for sensing a value of the</p> <p>12 parameter during movement of the window or panel along</p> <p>13 its path of travel?</p> <p>14 A. That's what it says here.</p> <p>15 Q. Now, if you look forward to Paragraph 54 of your</p> <p>16 Declaration, feel free to review it.</p> <p>17 My question is: You believe that sensing a value</p> <p>18 of the parameter was defined in the prosecution history</p> <p>19 of the '037 patent, correct?</p> <p>20 A. That is my opinion, it appears here.</p> <p>21 Q. And right above Paragraph 54 on the last line of</p> <p>22 Paragraph 53, you state at the end of that paragraph</p> <p>23 sensing, in quotes, is not used in Claim 13 in the</p> <p>24 traditional sense, and, therefore, must not be construed</p> <p>25 using its conventional plain meaning.</p>
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<p>1 fully opened window faced with an obstruction?</p> <p>2 A. I believe it does.</p> <p>3 Q. And how does the '037 patent make that</p> <p>4 distinction?</p> <p>5 A. I have to refresh my memory, but I seem to</p> <p>6 remember that there are specific temperature sensors</p> <p>7 that are incorporated in some embodiments of the</p> <p>8 practicing of the patent.</p> <p>9 Q. I would like to direct your attention to Claim 13</p> <p>10 of the '037 patent. It's one of the claims that you</p> <p>11 evaluated for purposes of your deposition prep?</p> <p>12 A. I believe that was one of the claims that was</p> <p>13 challenged.</p> <p>14 Q. And you see in Claim 13 in the third paragraph</p> <p>15 after the preamble, there is a claim limitation reciting</p> <p>16 sensing a value of the parameter during movement of the</p> <p>17 window or panel along its travel path.</p> <p>18 A. Yes.</p> <p>19 Q. And you offered an interpretation of that claim</p> <p>20 limitation, correct?</p> <p>21 A. We can refer to my report. I assume that you're</p> <p>22 being truthful.</p> <p>23</p> <p>24 Q. I'm showing you what's been previously marked as</p> <p>25 Exhibit 2003 in IPR 201400649, or Patent Number 7548037,</p>	<p>1 Do you see that?</p> <p>2 A. That -- that is on the paper.</p> <p>3 Q. And the definition that you've proposed for the</p> <p>4 sensing limitation is more narrow than the broader plain</p> <p>5 meaning of sensing, correct?</p> <p>6 A. No, that's not correct.</p> <p>7 Q. Okay. Well, how does the plain meaning of</p> <p>8 sensing compare to the definition that you've prepared?</p> <p>9 A. There's no comparison between the two.</p> <p>10 Q. What, in your view, is the plain meaning of</p> <p>11 sensing?</p> <p>12 A. Well, to -- well, depends in what context,</p> <p>13 biological context? Intellectual type logical context?</p> <p>14 Electrical engineering context? There are different</p> <p>15 contexts.</p> <p>16 You can look at the reliable dictionary sensing.</p> <p>17 The question is too broad to be answered intelligently.</p> <p>18 Q. What, in your view, would be the plain meaning of</p> <p>19 sensing if the prosecution history that you cite in</p> <p>20 Paragraph 54 did not exist?</p> <p>21 A. As you probably know as a -- as a patent</p> <p>22 attorney, an inventor can be his own lexicographer. He</p> <p>23 can call this anything he wants to, as long as it</p> <p>24 becomes clear to a person of ordinary skill in the -- in</p> <p>25 the art which part of the specifications he's referring</p>

<p style="text-align: right;">218</p> <p>1 to. He can define sensing to mean -- to mean jumping 2 out of the window, if he wants to.</p> <p>3 So it is -- you have to, as you know, interpret 4 things certain ways. You probably know it better than I 5 do, independent of the way you're asking this question.</p> <p>6 But you go to the intrinsic evidence to get the 7 meaning of the word "sensing" from the intrinsic 8 evidence. If that is for any reason ambiguous, then you 9 go to extrinsic evidence.</p> <p>10 And my understanding is that the first generation 11 or layer of that extrinsic evidence is the prosecution 12 history, and then you go to other places.</p> <p>13 Such a definition of sensing has no necessary 14 connection to the plain and ordinary meaning of the 15 word, unless it happens to overlap it.</p> <p>16 That's why the question is meaningless to compare 17 the sensing in this sense to the sensing in general the 18 way you asked it.</p> <p>19 Q. You stated in your Declaration: According to the 20 claim term, sensing is not used in Claim 13 in the 21 traditional sense.</p> <p>22 What did you mean by that?</p> <p>23 A. Well, the way -- as we say in Texas, it ain't 24 what you think it is.</p> <p>25 Q. What was the traditional sense that you had in</p>	<p style="text-align: right;">220</p> <p>1 please repeat it.</p> <p>2 A. Okay. I did not specify whose tradition.</p> <p>3 As I mentioned to you in the early part of this 4 question, there are different contexts for sensing. 5 Tradition has to do with a discipline of thought, 6 biological, psychological, mathematical, mechanical 7 engineering, electrical engineering, many others. There 8 are many, many different traditions.</p> <p>9 What I'm saying is clear your brain of all of 10 those. Read the patent. That's the meaning of sensing.</p> <p>11 Q. Did you read the patent to determine the meaning 12 of sensing?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did you find the word "sensing" used 15 throughout the patent in many different contexts?</p> <p>16 A. Sir, that's a nonsensical question. The -- the 17 claims can choose any words they want. You look for the 18 interpretation and the definition of those words in the 19 specifications. They may occur as such or they may not.</p> <p>20 You look for it because you -- your job is to 21 interpret the claims in a meaningful way in the context 22 of the specs. You know that. I know that.</p> <p>23 I don't understand what your question is.</p> <p>24 Q. Did you look at how sensing was used each time it 25 appeared in the specification of the '037 patent?</p>
<p style="text-align: right;">219</p> <p>1 mind when you said that sensing is not used in Claim 13 2 in the traditional sense?</p> <p>3 A. I did not think of it that way.</p> <p>4 Q. So did -- when you used the term "traditional 5 sense" in your Declaration, did that have some meaning 6 to you?</p> <p>7 A. It did indeed.</p> <p>8 Q. What was its meaning?</p> <p>9 A. The meaning is it is not what you think it is. 10 It is what the patent says it is. Traditional for you 11 or anybody else who has a tradition of thinking about 12 that word.</p> <p>13 It doesn't matter what my tradition is, whatever 14 you think it is, it ain't.</p> <p>15 Q. So your view of the term "traditional sense" is 16 it means something different than what anybody thinks it 17 is?</p> <p>18 A. That's not what I said.</p> <p>19 Q. Okay. So traditional sense is what anybody 20 thinks it is?</p> <p>21 A. That's not what I said.</p> <p>22 Q. Okay. Then what do you mean by "traditional 23 sense"?</p> <p>24 A. I explained it. Would you like me to repeat it?</p> <p>25 Q. Well, yes, if that was your explanation, then</p>	<p style="text-align: right;">221</p> <p>1 A. That's the reason I came up with this report.</p> <p>2 Q. And in your report, the only thing that you cite 3 to is the prosecution history of the '037 patent for 4 your definition of sensing, correct?</p> <p>5 A. I -- if you truthfully represent that that is 6 what I said, I will accept your -- I will conditionally 7 accept your claim, but, otherwise, I have to read my 8 patent carefully to see if that's the only thing I say 9 about it.</p> <p>10 Q. All right. If you look at Paragraphs 52 through 11 54, which is where you interpreted the claim term 12 involving "sensing," and you can tell me whether you 13 find any citations to the specification.</p> <p>14 Other than the statement of the definition that 15 you got from the prosecution yesterday?</p> <p>16 (Reading)</p> <p>17 A. I believe you have read my report, right? It 18 doesn't say that that's the only basis of my opinion. I 19 give a fairly sufficient eloquent description of why 20 sensing means what it does in the context of the patent.</p> <p>21 As you know, the word does not have -- have to 22 appear in the body of the patent. It has to be 23 meaningfully construed from it. So I give you good 24 arguments why in the context of the patent sensing must 25 mean what it -- I said it means, and then I backed it up</p>

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