

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

In re Patent of: Darbee	Universal Remote Control, Inc.
Patent No.: 5,414,761	v.
Filed: Oct. 8, 1993	Universal Electronics, Inc.
Issued: May 9, 1995	Case No. IPR2014-01104
Assignee: Universal Electronics Inc.	Trial Paralegal: Cathy Underwood
Title: REMOTE CONTROL SYSTEM	

**PETITIONER'S RESPONSE TO PATENT OWNER'S MOTION FOR
OBSERVATION REGARDING CROSS-EXAMINATION OF THOMAS
GAFFORD**

Certificate of Filing: I hereby certify that this correspondence is being electronically filed with the USPTO on this 31st day of July, 2015.

By: / Jeannie Ngai /
Jeannie Ngai

Petitioner respectfully submits this Response to Patent Owner's motion for observation regarding cross-examination during the July 13, 2015, deposition of Thomas Gafford. *See* Paper 32.

Observations #1 & #2

Patent Owner's assertion that Mr. Gafford's credibility is in question because he used language from two paragraphs of Mr. Bristow's declaration is without any merit as shown by the testimony of Mr. Gafford in Ex. 2045, at 10:9–15, 13:14–14:2, 19:14–20:2, 20:13–21:4 and 24:8–26:8. *See also* Ex. 1063 at ¶¶ 15 & 18. Patent Owner omits citation to Ex. 2045 at 10:9–15, and 13:14–14:2, wherein Mr. Gafford testified that he was retained in this case because Petitioner's original technical expert, Mr. Stephen Bristow, passed away after filing his declaration with the Petition. Patent Owner also omits citation to Ex. 2045 at 19:14–20:2, wherein Mr. Gafford testified that he independently arrived at the substance of the opinions expressed in his declaration.

Patent Owner has not challenged this testimony of Mr. Gafford but for paragraph 15, which provided the relevant technological field, and paragraph 18, which provided the level of ordinary skill in the art. Patent Owner, however, omits citation to Ex. 2045 at 20:13–21:3 and 24:8–26:8, wherein Mr. Gafford testified that he came up with the substance of those two paragraphs independent of Mr. Bristow, but given that he substantially agreed with Mr. Bristow on the relevant

field and the level of skill, he saw no reason to perform “wordsmithing” of the form of the opinion as written by Mr. Bristow. Ex. 1063 at ¶¶ 15 & 18.

Observations # 3, #4, #5, #6 & #7

Patent Owner’s assertion that Mr. Gafford lacks credibility and qualifications because his education, employment, and experience did not involve universal remote controls is without any merit as shown by the testimony of Mr. Gafford in Ex. 2045 at 32:22–33:8 and 115:25–121:4. *See also* Ex. 1063, at ¶¶ 2–9, 15–19 and Appendix A. Patent Owner omits citation to Ex. 2045, at 32:22–33:8, wherein Mr. Gafford explains that “nobody gets a degree in remote controls” and that all subject matter relevant to remote controls was in the curriculum he took. Patent Owner also omits citation to Ex. 2045, at 115:25–121:4, wherein Mr. Gafford explains that the relevant field of study is embedded microprocessor systems and he has extensive experience in such embedded systems. Patent Owner also omits citation to Ex. 1063, at ¶¶ 2–9, 15–19 and Appendix A, wherein Mr. Gafford provides a declaration and his resume detailing his extensive experience with embedded systems.

Observations # 8 and #9

Patent Owner’s assertion that Mr. Gafford contradicts his construction of “code data” is without any merit as shown by Ex. 2045 at 60:13–61:20, 63:10–64:14, 64:22–:24, and 109:20–110:25. First, Patent Owner points to Ex. 2045 at

64:15-20, 65:7-14, and 68:1-7, but nowhere in those sections is the term “code data” discussed. Second, Patent Owner omits citation to Ex. 2045, at 63:10-64:14 and 64:22-:24, wherein Mr. Gafford explains that “machine instruction,” as Patent Owner’s counsel used in his question, was a broad, general term and, in that sense, “everything this device does it does in response to ... executing some computer instruction.” *Id.* at 63:15-17. Third, Patent Owner also omits citation to Ex. 2045 at 60:13-61:20, wherein Mr. Gafford explains that the specific reference he was asked about relates to the carrier, which “carries the codes, but is not the codes.” *Id.* at 61:7-20. Finally, Patent Owner omits citation to Ex. 2045, at 109:20-110:25, wherein Mr. Gafford explains the interaction of the word “instruction” with the claim term “code data” further.

Observation # 10

Patent Owner asserts that Mr. Gafford’s “admission” about Ciarcia’s unused pins supports Mr. Cook’s position about the lack of motivation to reduce pin-count in Ciarcia. But Mr. Cook has never expressed any opinion about motivation “to reduce pin-count in Ciarcia.” Thus, this challenge is untimely, outside the scope of all the papers, and should be disregarded. Second, this challenge is without any merit as shown by Ex. 2045 at 102:19-104:12, wherein Mr. Gafford explains that Ciarcia’s design is not optimized and one way to improve on it is to use Hastreiter’s keyboard.

Observation #11

Patent Owner asserts that Mr. Gafford's "admission" about menu instructions playing no role in the *transmission* of infrared codes is somehow relevant to the "code data" limitation. First, Patent Owner's assertion that "code data" requires instructions for the *transmission* of infrared codes is a new argument unsupported by the record and is outside the scope of all the papers and should be disregarded. Second, Mr. Gafford explained that menu instructions play a role in the *generation* of infrared codes. Ex. 2045 at 80:18–:23. Finally, Patent Owner omits citation to Ex. 2045 at 80:1–17 and 111:2–112:17, wherein Mr. Gafford provides further details about the menu instructions.

Observation #12

Patent Owner for the first time challenges whether Ciarcia's 74LS240 chip is a "central processing unit" and has bidirectional ports, and asserts that this is relevant to the motivation to combine Ciarcia with Hastreiter. Patent Owner has presented no expert testimony or attorney argument to support this challenge, and it is untimely, outside the scope of all of the papers, and thus should be disregarded. Patent Owner also omits citation to Ex. 2045, at 100:24–104:12, where Mr. Gafford explains that Ciarcia contains a processor with bidirectional I/O ports and the 74LS240 chip's circuit can also be modified to create bidirectional ports.

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