

**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 REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE  
CERTAIN INADMISSIBLE TESTIMONY OF PATENT OWNER'S  
WITNESS ALEX COOK**

Certificate of Filing: I hereby certify that this correspondence is being electronically filed with the USPTO on this 5th day of August, 2015.

By: /Jeannie Ngai/  
Jeannie Ngai

**Exhibit List**

Exhibit 1001: U.S. Patent No. 5,414,761 to Paul V. Darbee.

Exhibit 1002: U.S. Patent No. 5,255,313 to Paul V. Darbee.

Exhibit 1003: U.S. Patent No. 5,228,077 to Paul V. Darbee.

Exhibit 1004: Prosecution history of U.S. Patent Application Serial No. 08/134,086.

Exhibit 1005: Prosecution history of U.S. Patent Application Serial No. 08/046,105.

Exhibit 1006: Prosecution history of U.S. Patent Application Serial No. 07/587,326.

Exhibit 1007: U.S. Patent No. 4,918,439 to Wozniak.

Exhibit 1008: U.S. Patent No. 4,667,181 to James Hastreiter.

Exhibit 1009: “Build a Trainable Infrared Master Controller,” by Steve Ciarcia, BYTE March 1987 at pp. 113-123.

Exhibit 1010: R. Karr, D. Sokol & T.J. Schmidt, CORE Serial Interface (CS – 232) Manual, Revision 3.0 (1988).

Exhibit 1011: U.S. Patent No. 4,959,810 to Darbee et al.

Exhibit 1012: CORE Reference Manual (1987).

Exhibit 1013: Declaration of Stephen D. Bristow In Support of the Petition for Inter Partes Review of U.S. Patent No. 5,414,761.

Exhibit 1014: Complaint for Patent Infringement, *Universal Electronics Inc. v. Universal Remote Control, Inc.*, No. 13-984 (C.D. Cal. June 28, 2013).

Exhibits 1015–1042: Intentionally omitted.

Exhibit 1043: Intel 8254 Programmable Interval Timer datasheet.

{01792115.1}

Exhibits 1044–49: Intentionally omitted.

Exhibit 1050: Deposition Transcript of Ramzi Ammari (June 10, 2015).

Exhibit 1051: Deposition Transcript of Ramzi Ammari (June 11, 2015).

Exhibit 1052: Deposition Transcript of Alex Cook (June 15, 2015).

Exhibit 1053: Deposition Transcript of Alex Cook (June 16, 2015).

Exhibit 1054: Deposition Transcript of Alex Cook (June 17, 2015).

Exhibit 1055: Prosecution history of U.S. Patent Application Serial No. 07/127,999

Exhibit 1056: Complaint for Patent Infringement, *Universal Electronics, Inc. v. Universal Remote Control Inc.*, No. 12-00329 (C.D. Cal. March 2, 2012).

Exhibit 1057: Excerpts from the Deposition Transcript of Jak Hee You (Sept. 12, 2013) (Refiled).

Exhibit 1058: Order Granting Defendant's Motion for Attorneys' Fees, *Universal Electronics, Inc. v. Universal Remote Control, Inc.*, No. 12-329 (C.D. Cal. Mar. 10, 2015) (Dkt. 475).

Exhibit 1059: Defendant Universal Remote Control, Inc.'s Supplemental Submission re: Motion for Attorneys' Fees, *Universal Electronics, Inc. v. Universal Remote Control, Inc.*, No. 12-329 (C.D. Cal. Mar. 24, 2015) (Dkt. 502).

Exhibit 1060: Declaration of Peter H. Kang in Support of Defendant Universal Remote Control, Inc.'s Supplemental Submission re: Motion for Attorneys' Fees, *Universal Electronics, Inc. v. Universal Remote Control, Inc.*, No. 12-329 (C.D. Cal. Mar. 24, 2015) (Dkt. 502-2).

Exhibit 1061: U.S. Patent No. 4,623,887A – Welles.

Exhibit 1062: Intentionally omitted.

Exhibit 1063: Declaration of Thomas A. Gafford.

Exhibit 1064: *Waddington North Am., Inc. v. Sabert Corp.*, No. 09-4883, 2011 U.S. Dist. LEXIS 86632, at \*46–\*50 (D. N.J. Aug. 5, 2011).  
{01792115.1}

## **I. Introduction**

Patent Owner does not contest that Mr. Cook's improper testimony on cross- and redirect examination is unreliable, speculative, and/or lacks foundation. Thus, Mr. Cook's improper testimony should be excluded for at least those reasons.

Regarding Mr. Cook's improper testimony on cross-examination, Patent Owner contends that Petitioner opened the door. But Petitioner did not—in fact, Petitioner's counsel asked yes-or-no questions to which Mr. Cook provided nonresponsive answers.

Regarding Mr. Cook's improper redirect testimony, Patent Owner argues that one of the questions asked by Patent Owner's counsel was not leading, but the surrounding context and the answer to the question demonstrate the question was leading.

## **II. Mr. Cook's Cross-Examination Testimony That The Ciarcia Reference Lacks The Claimed "Input Means" Should Be Excluded**

Petitioner's primary argument supporting exclusion of Mr. Cook's testimony is that the testimony is unreliable (*see* Paper 30 at 4–5) and thus should be excluded or at least accorded no weight. Patent Owner ignores this argument, apparently conceding the point. (*See generally*, Paper 37).

Patent Owner instead argues Petitioner waived its objection by asking the question that led to the inadmissible testimony, thus opening the door. (*See* Paper

37 at 2 (quoting Ex. 1053 (Cook Dep.) at 418:18–25)). At most, Patent Owner’s argument supports admission of the answer to the cited question (Ex. 1053 at 419:1–:2), but no more. The remainder of the questions were yes-or-no questions to which Mr. Cook gave nonresponsive answers. For example, Petitioner requests exclusion of the following answer:

Q. All right. Ciarcia has buttons for inputting commands into the remote control, correct?

A. No. *Ciarcia has buttons for selecting menu items.*

Ex. 1053 at 419:11–:15. The italicized portion is nonresponsive and, as Petitioner’s reply seems to concede (*see* Paper 37 at 3), nonresponsive answers are inadmissible.

Patent Owner concedes that Petitioner objected, but argues Petitioner’s objection was insufficient. (Paper 37 at 3–4). Patent Owner cites no authority defining what constitutes a sufficient objection, other than 37 C.F.R. § 42.53(f)(8), which only requires that an objection be made “on the record during the deposition and preserved in a timely filed motion to exclude.” Here, the objection was clearly made on the record during the deposition (*see* Ex. 1053 at 423:1–:4) and preserved in this timely filed motion to exclude.

The Patent Office Trial Practice Guide clarifies that “an objection must be stated concisely” and “[o]bjections should be limited to a single word or term.” 77

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.