

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

In re Patent of: Paul D. Arling and
Patrick H. Hayes

Patent No.: 8,243,207

Filed: September 29, 2009

Issued: August 14, 2012

Assignee: Universal Electronics Inc.

Title: SYSTEM AND METHOD FOR
ACTIVITY BASED
CONFIGURATION OF AN
ENTERTAINMENT SYSTEM

Universal Remote Control, Inc.

v.

Universal Electronics, Inc.

Case No. IPR2014-01146

Trial Paralegal: Amy Kattula

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PETITIONER'S MOTION TO EXCLUDE CERTAIN INADMISSIBLE

TESTIMONY OF PATENT OWNER'S EXPERT ALEX COOK

Certificate of Filing: I hereby certify that this correspondence is being electronically filed with the USPTO on this 29th day of July, 2015

By: /Jeannie Ngai/
Jeannie Ngai

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Statement of the Law	1
III. Mr. Cook’s Redirect Testimony Regarding The Alleged Disclosure Of Prior Art Should Be Excluded	2
A. Mr. Cook’s Admissions.....	2
B. Analysis	3
IV. Conclusion	3

TABLE OF AUTHORITIES

Page

Regulations

37 C.F.R. §42.62(a).....1

Cases

SkinMedica, Inc. v. Histogen Inc.,
727 F.3d 1187 (Fed. Cir. 2013)2

Waddington North Am., Inc. v. Sabert Corp.,
2011 U.S. Dist. LEXIS 86632 (D. N.J. Aug. 5, 2011)2, 3

Rules

Fed. R. Evid. 611(c).....1

EXHIBIT LIST

- 1001* U.S. Patent No. 8,243,207 (filed September 29, 2009) (issued August 14, 2012) to Paul D. Arling and Patrick H. Hayes.
- 1002* Prosecution history of U.S. Patent Application Serial No. 12/569,161, which matured into the '207 patent.
- 1003* Declaration of Jim Geier, In Support of the Petition for *Inter Partes* Review of U.S. patent No. 8,243,207
- 1004* First Amended Complaint for patent Infringement in *Universal Electronics Inc. v. Universal Remote Control, Inc.*, Civil Action No. SACV 13-00984, dated July 22, 2013
- 1005* U.S. Patent Publication No. 2003/0120831 (filed December 20, 2001) (published June 26, 2003) to Thomas Dubil et al.
- 1006* "IntelliControl Reference Manual" Version. 8.1, April 2002 by Niles Audio Corporation.
- 1007* U.S. Patent No. 4,527,204 (filed February 14, 1983) (issued July 2, 1985) to Daisuke Kozakai.
- 1008-1045 INTENTIONALLY SKIPPED
- 1046* Amended Notice of Deposition Of Alex Cook in Case No. IPR2014-1146 (Paper 19)
- 1047* Decision Institution of *Inter Partes* Review in Case No IPR2014-1146 (Paper 9)(January 9, 2015)
- 1048-1053 INTENTIONALLY SKIPPED
- 1054* Transcript of June 17, 2015 Deposition of Alex Cook
- 1055* Reply Declaration of James T. Geier

* Previously filed.

The following is Petitioner's Motion To Exclude Certain Inadmissible Testimony of Patent Owner's Expert Alex Cook. The present motion is being timely filed in accordance with the Scheduling Order that issued January 9, 2015 (Paper 10) and the Notice of Joint Stipulation filed on July 16, 2015 (Paper 24).

I. Introduction

Inadmissible testimony should not be a part of this trial record. Following Petitioner's cross-examination of Mr. Cook, Patent Owner engaged in a redirect examination. During this redirect examination, Patent Owner asked impermissible and leading questions in an effort to cover up Mr. Cook's acknowledgements with respect to the teachings of the prior art that contradicted Patent Owner's arguments in support of validity of claims 13-15 of the '207 patent. This testimony should be excluded because it was provided in response to leading questions that amounted to no more than attorney argument. Petitioner's counsel objected to these impermissible questions during the deposition. Petitioner requests exclusion of the testimony set forth in Ex. 1054 at 727:14-728:16.

II. Statement of the Law

The Federal Rules of Evidence apply in this proceeding. *See* 37 C.F.R. §42.62(a). Federal Rule of Evidence 611(c) provides in relevant part that “[l]eading questions should not be used on direct examination except as necessary to develop the witness's testimony. . . .” Fed. R. Evid. 611(c). Testimony that is

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