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

ORACLE CORPORATION, §
NETAPP INC. AND HUAWEI §
TECHNOLOGIES CO., LTD. §
§
Petitioners, § IPR2014-01197
§ IPR2014-01207
VS. § IPR2014-01209
§
§
CROSSROADS SYSTEMS, §
INC. §
§
Patent Owner. §

TELECONFERENCE WITH THE PANEL
JULY 16, 2015
CONFIDENTIAL PROTECTIVE ORDER MATERIAL
EXHIBIT 1217

Job No: 95252

1 THE COURT: Hello. This is Judge Jung in a
2 telephone conference for Cases IPR2014-01197, -01207 and
3 -01209. I have with me judges with Judges Kalan and Lee.

4 Do I have anyone for the petitioner in these
5 related cases?

6 MR. GARDELLA: Yes, Your Honor. This is
7 Greg Gardella from Oblon on behalf of Petitioner. I
8 believe I'm the only one who's going to be speaking. We
9 do have a court reporter here, and I do have others in the
10 room with me if you'd like me to introduce them.

11 THE COURT: If you're the only one that's
12 going to be speaking, that's fine. Thank you,
13 Mr. Gardella.

14 Do we have anyone for the patent owner?

15 MR. HALL: Yes, Your Honor. This is James
16 Hall for the patent owner. Similar situation to
17 Mr. Gardella, and we're both in the same room.

18 THE COURT: Okay. So we have -- we received
19 an e-mail shortly, and before we begin, Mr. Hall, can you
20 just describe what's happening and what the purpose of
21 this conference call is?

22 MR. HALL: Yes, Your Honor. So the
23 petitioner is taking the deposition of Patent Owner's
24 expert declarant. They've concluded their
25 cross-examination. We were recessing to prepare our

1 redirect, and actually before it went off record,
2 Mr. Gardella stated that they would object to any
3 conference between the attorneys for Patent Owner and the
4 expert during the recess, and that they would preserve
5 their -- or they're reserving their right to move to
6 strike the testimony, any testimony that resulted after
7 that.

8 So we thought it appropriate to get the
9 Board involved before we did any such consultation because
10 we don't want to do anything improper. But based on, you
11 know, the case law that we have seen, such consultation
12 would not be proper -- or it would be proper, and we
13 wanted the Board's guidance on this topic. And, you know,
14 I have cases that I could cite to the Board and can more
15 narrowly focus the inquiry, but that's generally what's
16 going on.

17 THE COURT: Okay. Mr. Gardella, do you
18 agree that's the events that transpired before this
19 telephone conference?

20 MR. GARDELLA: Yeah. There are some other
21 relevant events that I'll get to when it's my turn to
22 talk, essentially. But, yeah, I generally agree with
23 Mr. Hall's summary.

24 THE COURT: Okay. Mr. Hall, you said you
25 had some case law as the basis for your request for a

1 conference with the witness. Can you briefly describe
2 those?

3 MR. HALL: Yes, Your Honor. I have three
4 cases that we've been able to locate since the deposition
5 was recessed. The first is Google, Inc. v. Jongerius
6 Panoramic Technologies. It's Case IPR 2013-00191.

7 In that case, the -- I'm not sure of the
8 precise situation before the Board or the precise
9 character of how the question came to the board, but the
10 question was exactly the same as what's presented here,
11 where the Board looked to the testimony guidelines in
12 Appendix D of the Office Trial Practice Guide regarding
13 the impropriety of consulting with a witness during
14 cross-examination but noted that it's expressly or -- and
15 noted that it is permitted to consult with a witness once
16 cross-examination has concluded and before redirect
17 examination has begun.

18 I mean, the quote from the case is, "Patent
19 Owner's counsel was permitted to confer with the witness
20 before redirect examination begins."

21 THE COURT: Okay.

22 MR. HALL: I have another case, which I
23 believe is the next chronologically, Schott Gemtron v. SSW
24 Holding Company, which is Case IPR2013-00358.

25 In that case, the Board said precisely the

1 same thing.

2 THE COURT: Okay.

3 MR. HALL: "Because cross-examination has
4 concluded, there is no prohibition on petitioner in that
5 case conferring with Mr. Schechter."

6 The last one that we found in the time
7 period we had is Case IPR2014-116, which is Focal
8 Therapeutics v. Senorx, Inc. And that case cited where
9 the -- the Board again cited to Appendix D, as well as the
10 Google case that we previously cited, saying that "Counsel
11 is permitted to confer with the witness before redirect
12 examination begins."

13 So based on those case, we believe that it's
14 permissible to confer with the witness before redirect
15 begins.

16 I believe Mr. Gardella has referred to cases
17 where impermissible coaching is not allowed or the Board
18 has stated that it would view impermissible coaching in a
19 poor light. I'm not sure what he's going to say, but --

20 So the question is, is what is the line
21 between a permissible conference and impermissible
22 coaching?

23 One of the issues is, we as lawyers need a
24 little help from an expert to understand some of the
25 technical areas. So to what extent are we able to ask him

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