

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION and NETAPP INC.,
Petitioners,

v.

CROSSROADS SYSTEMS, INC.
Patent Owner.

Case IPR2014-01207
Patent No. 7,051,147

**PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION TO
EXCLUDE EVIDENCE CITED BY PETITIONERS**

Patent Owner respectfully submits this Reply in support of its Motion to Exclude (Paper 61, “Motion” or Mot.”).

A. Ex 1218: Levy Testimony-Objection 1 (56:19-57:24): Patent Owner objected to Petitioners’ citation to Ex.1218 at 56:19-57:24 (Paper 45 (“Reply”) at 3) for the proposition that “a host channel ID (a Fibre Channel ID in the *CRD* combined system) is sufficient to identify the host” as such is directly contrary to Dr. Levy’s prior testimony. Mot. at 1, 4-5. Petitioners now attempt to distance themselves from that contrary testimony, arguing that Dr. Levy was testifying about “a different combined system in which there were multiple FC devices on a single channel” not a system that has a single host on a channel. Paper 66 (“Opp.”) at 3-4. This is simply not correct. Dr. Levy was distinguishing channel identifiers from host identifiers while discussing the example in ¶ 70 of his IPR2014-01226 Declaration—an example in which there was one host per channel. Ex. 1232, 125:22-126:19; IPR2014-01226, Ex. 2027 at ¶ 70. Thus, Petitioners’ attempt to distinguish Dr. Levy’s prior testimony fails.

Moreover, Petitioners ignore the fact that in the present case Dr. Levy testified that “on the host side of the map, all that’s required in the map is an identifier sufficient to distinguish between **multiple hosts on the first transport medium**. So a fibre channel ID of some kind would be one example of something that could **distinguish between such hosts**” in context of a system “where there is only a single host device on a fibre channel.” Ex. 1218, 57:10-24 (emphasis added). Thus, Petitioners’ assertion that Dr. Levy conceded that a host channel ID is sufficient to

identify the host is also directly contradicted by Dr. Levy's testimony in the present case with respect to a one host per channel system. *See also* Mot. at 5 (citing Ex. 1218, 54:5-16, 67:22-68:8, 92:14-20, 93:9-15, 94:15-22).

Petitioners also argue that "fibre channel ID" is not ambiguous because the '147 Patent describes "fiber channel identifiers." Opp. at 2-3 (referring to identifiers for "Fibre Channel devices"). Petitioners however use their term "fibre channel ID" in an entirely different way from the "fibre channel identifiers" they refer to in the specification. *Id.* at 4 (referring to identifiers for channels). *See* Reply at 3; Ex. 1001,8:1-2. That Petitioners cannot agree on one definition demonstrates the ambiguity of "fibre channel ID." Petitioners' arguments that "fibre channel ID" is not vague based on context and Dr. Levy's understanding (Opp. at 2-3) were previously addressed in the Motion. *See* Mot. at 3-4.

Accordingly, Patent Owner respectfully requests that the objections in the Motion be sustained or that the Board consider additional portions of the record under FRE 106, as requested in the Motion. *See Zhongshan Broad Ocean Motor Co., Ltd., et al. v. Nidec Motor Corp.*, IPR2014-01121, Paper 42 at 3 (Sept. 10, 2015) (citing FRE 106).

B. Ex 1218: Levy Testimony-Objection 2 (93:20-96:4): Petitioners attempt to address Patent Owner's objection with respect to the use of "for routing purposes" by arguing that the phrase was clarified. Opp. at 5. However, Patent Owner would point out that Petitioners' clarification does not support the initial proposition for which the

objectionable testimony was cited in the Reply. That is, Dr. Levy does not say that a host interface ID identifies the host, only that “responding on that interface would be responding to the correct host.” Ex. 1218, 95:5-6.

Turning to Petitioners’ assertions with respect to Ex. 1218, 95:13-22, Petitioners do not actually address Patent Owner’s objections to this testimony, but simply assert that the “witness did not have any difficulty in responding to the question.” Opp. at 5. The issue is not whether the deponent had difficulty in answering the question but, rather, whether the questions are vague (Mot. at 8-9) and, further, whether Petitioners mischaracterized Dr. Levy’s testimony (Mot. at 9-11), neither of which is addressed by Petitioners. In any case, Dr. Levy explicitly denied the very statement that Petitioners claim he supports. Ex. 1218, 92:17-20 (Dr. Levy explaining that “the host interface ID does not identify the host”). *See also* Mot. at 9-10 (citing Ex. 1218, 92:8-20; 93:9-15, 94:15-22, 95:7-12). As such, Patent Owner respectfully requests that the objection to the testimony at Ex. 1218, 93:20-96:4 be sustained or additional testimony considered under FRE 106, as requested in the Motion.

C. Ex 1220: Middleton Testimony: Petitioners’ Opposition simply reiterates Petitioners’ mischaracterizations of Middleton’s testimony from the Reply. While Mr. Middleton agreed that he could not “testify as to **any specific** technical reason” (54:6-9), he provided multiple reasons Crossroads could not test its software. *See e.g.*, Ex. 1220, 106:13-107:15. Mr. Middleton repeatedly confirmed that Crossroads could not have tested the access controls, under any conditions, until Verrazano was complete.

See Mot. at 11 (citing Ex. 1220, 52:3-12, 106:13-107:15, 108:5-15, 113:7-14, 115:14-17). The testimony should be excluded for the reasons set forth in the Motion at 11-12.

D. Ex. 1009, 1224, 1225, 1226: In response to these objections, Petitioners note that a district court's claim construction order or an expert declaration regarding claim construction may be relevant to the broadest reasonable interpretation. Opp. at 10. This argument is inapposite because exhibits 1009, 1224, 1225, and 1226 are neither. Exhibits 1009, 1224 and 1225 are preliminary infringement statements and should be excluded for the reasons set forth in the Motion at 12-14.

Further, with respect to Exhibit 1226, Petitioners have completely failed to establish the relevance of the user guide for the ProtecTIER software from Diligent Technologies (not Overland). Instead, Petitioners unhelpfully "note" that Patent Owner did not contest "that the accused Overland 9500D actually operated in the manner described." Opp. at 7. Disregarding the fact that there is no competent evidence to actually contest (or that Patent Owner even has a mechanism for contesting, as Petitioners chose not to provide an expert declaration), the real issue is the relevance of this software guide. How this software (never referenced in the preliminary infringement contentions) may have operated is simply irrelevant; and, thus, Exhibit 1226 should be excluded for the reasons set forth in the Motion at 12-14.

E. Ex. 1008: Petitioners cite *Metrics, Inc. v. Senju Pharm*, for the proposition that "a party may cure an objection to the certificate of translation by serving supplemental

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