

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION, NETAPP INC. and
HUAWEI TECHNOLOGIES CO., LTD.,
Petitioners,

v.

CROSSROADS SYSTEMS, INC.
Patent Owner.

Case IPR2014-01209
Patent No. 7,051,147

**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE
CITED BY PETITIONERS**

Patent Owner respectfully requests that certain evidence relied on by Petitioners be excluded pursuant to 37 C.F.R. § 42.64(c). Patent Owner objected to various exhibits on either February 13, 2015 (Attachment A), February 18, 2015 (Attachment B) or August 28, 2015 (Paper 46). Patent Owner's objections to deposition testimony were made in the record during deposition. In addition or in the alternative, because Petitioners repeatedly mischaracterize the deposition testimony of Patent Owner's expert Dr. Levy and declarant John Middleton, Patent Owner further requests that the Board consider additional portions of these deponents' testimony pursuant to the Rule of Completeness (FRE 106).

I. PETITIONERS MISCHARACTERIZE THE TESTIMONY OF DR. LEVY

Petitioners rely on certain testimony by Dr. John Levy, Ph.D., Patent Owner's expert, which should be excluded because it was obtained pursuant to objectionable questioning and/or mischaracterizes his testimony.

Petitioners cite Ex. 1218 at 93:20-96:4 for the proposition that Bergsten "sufficiently identifies host devices because there is only a single host device attached to each 'host interface,'" which, according to Petitioners, Dr. Levy allegedly conceded. Paper 44 ("Reply") at 14. The cited passage, however, includes multiple objectionable questions, which objections were made on the record:

Q. So in this particular use case or embodiment, I believe we're in agreement that there is a single host attached to each host interface within each storage controller. Is that correct?

A. Yes.

Q. So in that circumstance, identifying a host interface is sufficient to identify for routing purposes a particular host?

MR. HALL: Objection; form.

Q. (BY MR. GARDELLA) Do you agree with that?

A. I'm thinking about it.

MR. HALL: Same objection.

A. I'm just trying to understand what "for routing purposes" means in that context. It's certainly clear that knowing the interface through which a command is received does tell the controller which interface to send a response to that command back on, and if there is only one host on that interface, then that would be sent to the appropriate host.

Q. (BY MR. GARDELLA) So is your answer that in this use case, identifying host interface is sufficient to identify the single host that is attached to the host interface?

MR. HALL: Objection; form.

A. Well, I don't agree in the sense that the host interface ID only identifies the host interface and not the host.

Q. (BY MR. GARDELLA) Given that there is only a single host identified to each host interface, why, again, for routing purposes, is it not sufficient to identify the host interface?

A. Well, if by "routing purposes" you mean to be sure that the response to a command goes back to the correct host, then

responding on this correct interface would be responding to the correct host.

Q. Okay. So in that context and for that purpose, it would be sufficient to identify the host interface?

A. Well --

MR. HALL: Objection; form.

A. -- I still disagree with identifying the host because it doesn't actually identify the host.

Q. (BY MR. GARDELLA) But you would agree that the host interface ID is sufficient to ensure in this embodiment that transmissions are sent to the proper hosts?

MR. HALL: Objection; form.

A. Well, as in the CRD-5500 where there is a channel identifier, this interface ID does get the response sent back on the proper interface. And when there's only a single host present, that would be the host that is indicated.

Q. (BY MR. GARDELLA) So is your answer, yes, in this use case or embodiment, identifying the host interface is sufficient to ensure that the host gets the appropriate message transmissions?

MR. HALL: Objection; asked and answered.

A. I guess so.

Ex. 1218 at 93:20-96:4. Patent Owner objected to the questions referenced above because, *inter alia*, "routing purposes" was vague and confusing. Dr. Levy, himself, expressed confusion at the use of this phrase. *Id.* at 94:8-9. Thus, the testimony cited by Petitioners at 93:25-94:14 should be excluded under FRE 403.

Petitioners’ subsequent characterization of Dr. Levy’s testimony in response to these questions establishes the vagueness of “routing purposes.” Specifically, Dr. Levy discussed routing messages to the proper interface, which does not require identifying what may be attached to that interface. However, Petitioners use this testimony to allege that Levy conceded that, in a single host embodiment, the interface ID is sufficient to identify a host, despite Dr. Levy’s clear testimony—within the quoted passage—that the host interface does not identify the host. *Id.* at 94:20-22, 95:11-12. Moreover, the vagueness of the questions is illustrated by the fact that the entire quoted passage was in the context of the *Bergsten* reference. Petitioners’ reply appears to characterize Dr. Levy’s testimony as relating to the claimed invention; however, Dr. Levy was testifying regarding the “routing purposes” of *Bergsten*. Thus, the question is vague to the extent that “for routing purposes” has some significance beyond merely the *Bergsten* reference. For the above reasons, the testimony at 93:25-94:14 cited by Petitioners should be excluded.

Furthermore, Petitioners’ question at 95:13-16 is also vague and ambiguous. It is unclear what was meant by “the host interface ID is sufficient to ensure in this embodiment that transmissions are sent to the proper hosts” because, in the prior examples there were not multiple hosts per host interface ID. *See* Ex. 1218, 93:20-24. In addition, it is not clear what “sufficient” means. Dr. Levy had just stated that “Well, as in the CRD-5500 there is a channel identifier, this interface identifier does get the

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.