

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC., QUANTUM CORP.,
AND ORACLE CORP.,
Petitioners,

v.

CROSSROADS SYSTEMS, INC.
Patent Owner.

Case IPR2014-01544¹
Patent No. 7,051,147

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

¹ Case IPR2015-00852 has been joined with this proceeding.

Patent Owner respectfully submits this Reply in support of its Motion to Exclude (Paper 38, “Motion” or “Mot.”). Petitioners’ Opposition (Paper 42, “Pet. Opp.”) does not refute the substance of Patent Owner’s objections that Petitioners’ Reply mischaracterizes Dr. Levy’s testimony; in fact, the Opposition actually confirms it. Therefore, Patent Owner respectfully requests that the objections be sustained under FRE 403 or that additional testimony be considered under FRE 106.

A. The Opposition Confirms the Mischaracterizations in the Reply

In the Motion, Patent Owner objected to Petitioners’ mischaracterization of two separate instances of Dr. Levy’s testimony. First, Patent Owner objected to Petitioners’ citation to Ex. 1025 at 129:16-17 for the proposition that “[t]he **channel number** serves as a representation of a host in the map because it is ‘sufficient to identify a host for the purposes of the mapping.’” Paper 33 (“Reply”) at 13 (emphasis added); *see also id.* at 14-15. As pointed out in the Motion, the cited testimony “made no reference to channels” and was referring to SCSI IDs, not channel numbers. Mot. at 1-2, 4. Patent Owner also pointed out that Petitioners’ characterization of the cited testimony was directly contradicted by Dr. Levy’s other testimony. Mot. at 4-6 (citing Ex. 1025 at 129:18-24; 126:13-127:20; 218:7-16). Faced with the indisputable record, Petitioners now concede, contrary to the characterizations in the Reply, that “there is no dispute” that Dr. Levy was referring to SCSI IDs in the cited testimony. Pet. Opp. at 9. Since this testimony

was undeniably directed to SCSI IDs, not channel numbers, the testimony has no probative value with respect to channel numbers. As such, Patent Owner's objection under FRE 403 should be sustained because the relevance of the testimony is outweighed by the danger of unfair prejudice; or, in the alternative, additional testimony of Dr. Levy should be considered under FRE 106, as requested in the Motion.

Second, Patent Owner objected to Petitioners' citation to the testimony at Ex. 1025 at 112:16-25 as establishing that AL_PA addresses "will change." Mot. at 7 (citing Reply at 5). As pointed out by Patent Owner, however, Dr. Levy indicated that it was simply a possibility that the numbers may change, not that they **will** change. *See* Motion at 7-8. Petitioners now concede that Dr. Levy was "clear that an AL_PA . . . **may** change" not that the AL_PAs will change. Pet. Opp. at 11 (emphasis added). Accordingly, Petitioners misleading citation to Dr. Levy's testimony at 112:16-25 should be excluded under FRE 403 or the testimony should only be considered in conjunction with the surrounding context and relevant re-direct testimony, as requested in the Motion.

B. Petitioners' Alternative Relevance Ground is Meritless

Unable to defend their mischaracterization of Dr. Levy's testimony, Petitioners argue that the testimony is still relevant, not to establish the propositions for which it was initially cited, but because it is allegedly inconsistent with Patent Owner's interpretation of the "map" limitation. Pet. Opp. at 10 ("Dr.

Levy's testimony . . . highlights that Patent Owner's desired claim interpretation is improper."), 12 (same). Petitioners reprise their strawman argument from the Reply that Patent Owner's interpretation of the "map" limitation allegedly requires identifying a host in the map with a perpetual, unchanging identifier that intrinsically identifies a particular host and excludes identifiers such as SCSI ID and AL_PA. Pet. Opp. at 9 n.2, 11; Reply at 4. Patent Owner has never maintained that the identifier in the map has to perpetually identify a host in the manner asserted by Petitioners, so this assertion of relevance is without merit.

Moreover, Dr. Levy explained that to "identify precisely to which host [specified storage is] allocated merely means distinguish one host from another on the bus." Mot. at 4 (citing Ex. 1025 at 129:22-24). Dr. Levy distinguished the use of SCSI IDs from the "switching cables" example on which Petitioners' argument is based – an example that actually included channels rather than SCSI IDs or AL_PAs in the map – explaining that "there can't be more than one host with the same SCSI ID on a SCSI bus. Therefore, the SCSI ID is, in fact, adequate to distinguish a host on a SCSI bus, whereas in the CRD-5500, there is no SCSI ID or host identification mapped." Motion at 4-5 (citing Ex. 1025 at 126:13-127:20). Dr. Levy also explained that an AL_PA identifies a particular host on a Fibre Channel loop and can thus be used to distinguish hosts on a Fibre Channel loop. Ex. 1025 at 109:10-16.

Petitioners' argument that the objected-to testimony is somehow relevant to an unsupported attorney argument does not outweigh the prejudice of the mischaracterizations. Accordingly, Patent Owner requests that the objections under FRE 403 be sustained or additional contextual testimony and relevant re-direct testimony be considered under FRE 106, as requested in the Motion.

C. Petitioners' Procedural Attacks are Meritless

Failing to refute the substance of Patent Owner's objections, Petitioners lodge several procedural complaints. Petitioners argue that FRE 106 and FRE 403 are not applicable to *inter partes* review. Pet. Opp. at 5-7. As an initial matter, the Board has explicitly found FRE 106 applicable in *inter partes* review:

The context of a witnesses' statements "ought in fairness" be considered "contemporaneously" when evaluating a witness's testimony. It would be helpful to the Board to have context-providing statements identified by the adverse party, and we see little value in deferring such identification to the oral hearing

Zhongshan Broad Ocean Motor Co. v. Nidec Motor Corp., IPR2014-01121, Paper 42 at 3 (Sept. 10, 2015) (quoting FRE 106). With respect to FRE 403, the fact that the dangers under Rule 403 for a jury trial differ from those in an *inter partes* review proceeding is something for the Board to consider and not a blanket prohibition against 403 objections. *See, e.g., Neste Oil Oyj v. Reg Synthetic Fuels, LLC*, IPR2013-00578, Paper 53 at 10 (PTAB Mar. 12, 2015) (cited by Pet. Opp. at

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