

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALCOMM INC.,
Petitioner

v.

BANDSPEED, INC.
Patent Owner

IPR2015-00316¹
U.S. Patent No. 7,477,624 B2

**PATENT OWNER BANDSPEED, INC.'S MOTION FOR OBSERVATION
RELATED TO DEPOSITION TESTIMONY OF DR. ZHI DING**

Mail Stop
Patent Board
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

¹ IPR2015-01581 has been joined with IPR2015-00316.

Bandspeed, Inc. (“Patent Owner”) submits this Motion for Observation Related to Deposition Testimony of Dr. Zhi Ding, identifying specific portions of Dr. Ding’s April 15, 2016 deposition transcript (Exhibit 2006) for the Patent Trial and Appeal Board’s consideration. Dr. Ding is a reply declarant of Petitioner Qualcomm Inc. Patent Owner submits the following observations:

Observation No. 1

In Exhibit 2006, 82:18-21 and 84:17-85:10, Dr. Ding testified that he did not see any examples in the ‘624 Patent in which votes to use communications channels come from non-participants and that Sage and Cuffaro also only show the communications terminals being used as participants. This testimony is relevant to Dr. Melendez’s Declaration (Exhibit 2001 at 10-12) and his statements regarding the proper claim construction for “vote to use the particular communications channel” in view of the ‘624 Patent specification and Dr. Ding’s testimony in paragraphs 6 and 7 of his supplemental declaration regarding the proper claim construction for that same limitation.

Observation No. 2

In Exhibit 2006, 85:24-86:16 and 88:13-89:22, Dr. Ding testified that a measurement of signal strength is not a vote but rather “a measurement regarding

the quality.” When presented with claim 2 of the ‘624 Patent that includes a limitation related to performance data and claim 3 of the ‘624 Patent that includes a limitation related to voting and asked whether these limitations make it clear that performance data is being called one thing and voting is being called something else in the ‘624 Patent, Dr. Ding responded, “[t]o the extent that if one construed both as being binary, that would be correct.” This testimony is relevant to the proper claim construction of “vote to use the particular communications channel” in view of the ‘624 Patent specification and Dr. Ding’s testimony in paragraphs 6 and 7 of his supplemental declaration regarding the proper claim construction for that same limitation.

Observation No. 3

In Exhibit 2006, 93:25-94:18 and 98:7-17, Dr. Ding testified, “I believe your question is whether I agree that the device being configured to transmit using default channels with one device while at the same time communicating using adaptive frequency hopping with another device needs to have its selection kernel preconfigured...[m]y answer is yes, that it would be correct.” When asked if he agreed whether Gerten required two selection kernel components, Dr. Ding further testified, “I agree.” This testimony is relevant to paragraphs 8-13 of Dr. Ding’s supplemental declaration regarding the alleged disclosure of Gerten of the

“transceiver is configured to transmit to and receive from a third communications device over the default set of two or more communications channels while transmitting to and receiving from the second communications device over the first set of two or more communications channels” limitation of the ‘624 Patent.

Observation No. 4

In Exhibit 2006, 101:10-102:1, Dr. Ding testified with respect to Fig. 1 of Gerten, “[i]n this figure at the time of the invention, ...these two piconets would be using...the same two default channel sets.” This testimony is relevant to Dr. Ding’s assertions in paragraph 12 of his supplemental declaration regarding the alleged ability of Gerten to permit a mobile unit to be configured to utilize adaptive frequency hopping in conjunction with Figure 1 of Gerten.

Observation No. 5

In Exhibit 2006, 113:4-17, Dr. Ding testified that with the ‘624 Patent, it would be permissible to have three channels have the same specified number of votes and they could all be used whereas in Cuffaro you would not want to sub out multiple frequencies with a new single frequency. This testimony is relevant to paragraph 14 of Dr. Ding’s supplemental declaration wherein he discusses Cuffaro’s alleged disclosure of the limitation of the ‘624 Patent requiring that a

specified number of votes be received to select a channel for use.

Observation No. 6

In Exhibit 2006, 126:8-11, 127:17-128:12, 130:22-133:14 and 135:4-136:7, Dr. Ding testified that “there is no discussions as given in the specification of Gendel” regarding Block 126 of FIG. 1 and that the only disclosure regarding Block 126 of Gendel is in FIG. 1 which states “Segment management subsystem (segment substitution mechanism not implemented).” This testimony is relevant to paragraphs 19-20 of Dr. Ding’s supplemental declaration and his assertion that Block 126 of Gendel allegedly discloses support of legacy communications systems.

Observation No. 7

In Exhibit 2006, 136:14-137:19, Dr. Ding testified that he did not address in his supplemental declaration the “performance data over one of the channels” limitation in respect to Gerten and Cuffaro discussed in Dr. Melendez’s declaration (Exhibit 2001 at 23-26), meaning Dr. Melendez’s arguments related to this limitation went un rebutted by Dr. Ding.

Observation No. 8

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