

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MAKO SURGICAL CORP.,
Petitioner,

v.

BLUE BELT TECHNOLOGIES, INC. and
CARNEGIE MELLON UNIVERSITY,
Exclusive Licensee and Patent Owner.

IPR2015-00630
U.S. Patent No. 6,205,411 B1

REPLY TO OPPOSITION TO MOTION TO EXCLUDE EVIDENCE

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GLOSSARY OF ABBREVIATIONS

| Shorthand | Description |
|------------|---|
| Howe Dep. | Deposition Transcript of Dr. Howe, Ex. 2006. |
| PO | Patent Owner Carnegie Mellon University and Exclusive Licensee Blue Belt Technologies, Inc. |
| Pet'r | Petitioner Mako Surgical Corp. |
| Mot. | Motion to Exclude, Paper 33 (Mar. 9, 2016). |
| Opp. | Opposition to Motion to Motion to Exclude, Paper 34 (Mar. 16, 2016). |
| DiGioia | A.M. DiGioia et al., <i>HipNav: Pre-operative Planning and Intraoperative Navigational Guidance for Acetabular Implant Placement in Total Hip Replacement Surgery</i> , 2nd CAOS Symposium, 1996, Ex. 1005. |
| Howe Decl. | Declaration of Robert D. Howe, Ex. 1004. |

I. Introduction.

During cross-examination, PO asked Pet’r’s expert, Dr. Howe, to confirm *what* his declaration opinions were and *what* evidence, if any, he was relying on for those opinions. But on redirect, Pet’r prompted Dr. Howe to explain “*why* you believe it would have been obvious for the system to suggest an optimum implant location?” Howe Dep. at 87:11–13. In the resulting testimony, Dr. Howe commented on various topics—*e.g.*, a “high quality objective function,” *id.* at 87:25–88:1, a “brute force” optimization technique, *id.* at 89:19, and a “gradient descent” optimization technique, *id.* at 89:24–25—which he later admitted were not present in his declaration:

Q. Sir, that explanation you’ve just provided to Mr. Kreeger was not contained in the declaration you submitted in this IPR petition, right?

A. That’s right.

Id. at 91:6–9. This testimony was a clear attempt to expand his opinions after the fact and was not necessitated by the questions Dr. Howe was asked on cross-examination, nor did it clarify any of his previous answers. The Board should thus exclude Dr. Howe’s redirect testimony under 37 C.F.R. § 42.53(d)(5)(ii) and not permit Pet’r to overhaul its original obviousness rationale via redirect testimony.

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