UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SONY COMPUTER ENTERTAINMENT AMERICA LLC
Petitioner

v.

APLIX IP HOLDINGS CORPORATION
Patent Owner

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Case No. IPR2015-00729
Patent 7,280,097

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PETITIONER'S RESPONSE TO PATENT OWNER'S

MOTION FOR OBSERVATION

I. INTRODUCTION

Petitioner respectfully requests that the Board consider the record, rather than Patent Owner's ("PO") characterizations of the record, in determining patentability of U.S. Patent No. 7,280,097 ("the '097 Patent"). PO's observations are misleading, because the observations either mischaracterize the record, or include assertions that are not supported by the record.

II. RESPONSES TO OBSERVATIONS

1.   PO's observation mischaracterizes the record and is not relevant. In his original declaration Dr. Welch provided a summary of his relevant experience and also attached his curriculum vitae. *See* **Ex. 1009**, *Welch Decl.*; **Ex. 1010**, *Welch CV*. PO ignored this evidence, and ignored the <u>agreed-upon PHOSITA definition</u>, and manufactured a new requirement of "hands-on experience," suggesting that Dr. Welch had none. *See* **Paper 21**, *Response* at 7-8. Of course, Dr. Welch has plenty of relevant hands-on experience, as he explained in even more detail in his supplemental declaration. *See* **Ex. 1039**, *Welch Supp. Decl.* Now, PO again ignores the evidence and the agreed-upon PHOSITA definition, and implies that Dr. Welch's experience is insufficient because <u>some of it</u> occurred during graduate school and with teams. *See PO Motion*. PO's observation is troubling because PO again misrepresents the record and invents rules to fit its theories rather than crafting theories to fit the law and facts. The implication that Dr. Welch has no relevant post-graduate school experience is

demonstrably false. *See, e.g.,* **Ex. 1039**, *Welch Supp. Decl.* at ¶¶ 11-13; *see also generally* **Ex. 1009**, *Welch Decl.*; **Ex. 1010**, *Welch CV*. But even more fundamentally, there is no support anywhere in the record for PO's new rule that working knowledge must come from experience done in isolation and after graduate school.

2.   The testimony cited in this observation does not support PO's assertion. Dr. Welch explained that this term, like many technology terms, have no "well-defined, absolute accepted meaning." **Ex. 2032**, *Welch Tr.* at 18:21-22:19. A PHOSITA would look to the context, and what the inventors said, in order to understand what the term means in a patent. *See id.*; *see also* **Ex. 1001,** *'097 Patent* at 14:36-42; Claim 38. Because the inventors explicitly included laptops as an example of a handheld host device, the patent speaks for itself and there is no "apparent inconsistency."

3.   The testimony cited in this observation is not relevant to any issue in this proceeding. *See* **Ex. 2032**, *Welch Tr.* at 22:20-23:12. There is no need for expert testimony to identify what the '097 Patent itself says, and the '097 Patent includes various embodiments of hand-held devices—some that explicitly include laptops. *See id.*; *see also* **Ex. 1001,** *'097 Patent* at 14:36-42; Claim 38. This is not construing "by implication," but rather following the explicit teachings of the patent.

4.   The testimony cited in this observation does not support PO's assertion. Dr. Welch explained that he had not opined on the automobile keyless entry, and

declined to speculate about that concept. *See* **Ex. 2032**, *Welch Tr.* at 24:1-29:17. Then,

Dr. Welch explained that "[t]here could be many places I could imagine [the host]

would be located." *See id.* In any event, PO's observation supports Petitioner's point.

Claim 38 limits the "plurality of hand-held host devices" first recited in independent

Claim 27 to a specific set of devices, and that list includes laptops. *See* **Ex. 1001,** *'097*

Patent at Claim 38. PO would apparently go further and include automobiles as

within the scope of Claim 38. PO is wrong about this—the claim says "automobile

keyless entry unit," not just "automobile." *See id.* But assume that PO is right. If so,

observing that the claim can be broadly construed to include automobiles (something

not recited) does not support the conclusion that the claim, and its antecedent, should

be construed narrowly to exclude laptops (something that is recited).

5. The testimony cited in this observation is not relevant to any issue in this

proceeding. *See* **Ex. 2032**, *Welch Tr.* at 55:22-6-:20; 63:1-70:3. The question is

whether the mouse device in Shima is an input assembly on a surface, not how other

commercial handheld devices such as the iPhone may have implemented

accelerometers or gyroscopes. No part of the relevant analysis requires finding that a

gyroscope or accelerometer would be on a surface.

6. The testimony cited in this observation is not necessary. *See* **Ex. 2032**,

Welch Tr. at 29:21-30:20. PO's counsel just read a portion of Dr. Welch's sworn

supplemental declaration into the record and asked Dr. Welch to confirm it. *See id.*

7.   PO's observation mischaracterizes Dr. Welch's testimony. Dr. Welch explained that "raw" data is an ill-defined concept, and that he was attempting to convey that "Mollinari utilizes a communication transfer that's something like a sender puts things into an envelope, packages them up, hands them off to somebody else, and somebody else opens the envelope and takes the things out and passes them on." *See* **Ex. 2032**, *Welch Tr.* at 30:21-37:22. PO's attorney was attempting to get Dr. Welch to state that his earlier testimony was wrong, and Dr. Welch explained that it was not, but that it "maybe could have been articulated better." *See id.*

8.   PO's observation mischaracterizes Dr. Welch's testimony. Dr. Welch explained that he did not offer an opinion about the claim construction of input controller or input signal. *See* **Ex. 2032**, *Welch Tr.* at 45:12-48:21. Attempting to respond to an incomprehensible question that asked about the meaning of input signal under various standards, Dr. Welch explained that generally the term could apply to a "wide range of possible signaling mechanisms." *See id.* This testimony has nothing to do with Petitioner's construction, nothing to do with specific claim limitations, and nothing to do with claim vitiation of any kind.

9.   PO's observation mischaracterizes Dr. Welch's testimony, and this testimony is not relevant to any issue in this proceeding. There are at least two input controller embodiments described in the '097 Patent, and a PHOSITA would understand that the claims are drafted broadly to cover both. *See* **Ex. 2032**, *Welch Tr.*

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