

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC., SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

SUMMIT 6 LLC
Patent Owner

CASE: IPR2015-00806¹
Patent No. 7,765,482 B2

Title: Web-Based Media Submission Tool

**PATENT OWNER'S MOTION FOR OBSERVATIONS ON THE CROSS
EXAMINATION OF GARY L. FRAZIER**

¹ Samsung Electronics Co., Ltd., who filed a Petition in IPR2016-00029, has been joined as a petitioner in the instant proceeding.

Patent Owner submits the following Motion for Observations on Cross-Examination of Dr. Gary L. Frazier, Petitioner's reply declarant. The transcript of Dr. Frazier's deposition is filed under seal as Exhibit 2075, with a public, redacted copy as Exhibit 2076, along with additional corresponding exhibits.

I. OBSERVATIONS

A. **Dr. Frazier did not perform any independent research on the relevant markets prior to making his opinions.**

1. In Exhibit 2075, on 37:4–22, Dr. Frazier testified that his performance of Internet research to confirm his understanding of the relevant market in 1995 to 2004 was simply “background” and “did not form the basis of anything that I opine on in my declaration – my opinions.” This testimony is relevant to ¶7 of Dr. Frazier's declaration. (Ex. 1018). The testimony is relevant because it impeaches Dr. Frazier's opinions regarding the uploading and hosting market from 1995 through 2004 as he stated that he relied on this research and document review “[i]n forming my [his] opinions[.]”

B. **Dr. Frazier ignores clear evidence of long-felt but unresolved need when forming conclusory opinions that Summit 6 did not provide sufficient data.**

2. In Exhibit 2075, on 34:20–35:2, Dr. Frazier testified that he had “no facts that would dispute any of the characterizations found in [the] 2001 marketing paper” contained in Exhibit 2015. Dr. Frazier then discussed Exhibit 2015 on

24:15–34:16 and on 41:18–47:7 and testified that it would have been good to have a survey that included a questionnaire of Rimfire’s customers, (27:3–9), and that the market research report included its “methodology,” (Ex. 2015 at p. 5), which included a comprehensive questionnaire and interviews with early adopters of image technology, such as eBay (Ex. 2075 at 27:25–28:14). Dr. Frazier also testified that “[b]ased on size,” eBay was the leading online marketplace for the sale of goods and services” in 2001. (Ex. 2075 at 28:18–25). Dr. Frazier also confirmed that eBay carried out a 4–6-month evaluation process to select Rimfire over other market players to solve its need for imaging technology service provider. (Ex. 2075 at 30:3–31:19). That testimony is relevant to Petitioner’s argument on page 16–17 of its Reply and ¶¶19–21 of Dr. Frazier’s Declaration. The testimony is relevant because despite claiming that Summit 6 provided no data or information to support a long-felt need, neither the Petitioner, nor Dr. Frazier, referenced the market research report, or the evidence of need and efforts to solve that need from the largest online auction entity, eBay, at all.

3. In Exhibit 2075, on 32:23–33:17, Dr. Frazier testified he “did not know that” image uploads was eBay’s number one customer service problem at the time, but Exhibit 2015 refreshed his recollection that the patented Rimfire technology reduced eBay’s customer service cost. This testimony is relevant to the

identification of a long-felt need for an imaging solution in the online auction industry on page 49 of the Patent Owner Response, Paper 28. This testimony is relevant because it confirms that the patented technology solved the number one customer support problem for the largest online auction industry player, eBay.

4. In Exhibit 2075, on 40:24–41:17, Dr. Frazier testified that eBay started its business in 1995 and as of October 12, 1999, eBay instructed its customers to associate or upload their images using the steps described in Exhibit 2070, and ultimately agreed eBay adopted the patented Rimfire technology at least as of 2001. This testimony is relevant to the establishment that the need was in fact “long-felt,” as described on page 49 of the Patent Owner Response, Paper 28. This testimony is also relevant because it contradicts Dr. Frazier’s opinion at ¶¶20 and 23, as well as Petitioner’s Reply at page 16–17, alleging that Summit 6’s response and exhibits failed to establish that the need was long-felt.

5. In Exhibit 2075, on 28:18–25, Dr. Frazier testified that, with respect to the Exhibit 2072, Moore Data Management Services’ President stated in a published article, “This new technology can add real value to the service we offer our MLS subscribers” and that the technology solved real estate agents’ previous need to submit photos through the mail. This testimony is relevant to ¶¶20–22 of Dr. Frazier’s Declaration. This testimony is relevant because Dr. Frazier does not

address the direct evidence of a recognized need within the real estate industry by the President of the largest MLS provider in North America. *See also* Ex. 2072 at 5-6; Ex. 2008.

C. Dr. Frazier failed to consider relevant licenses and a finding of infringement when forming conclusory opinions on commercial success.

6. In Exhibit 2075, on 17:15–18:22, Dr. Frazier testified that he “did not consider” the patent licenses that Summit 6 executed with, nor the consideration paid by Facebook and RIM to license the Summit 6 patents. This testimony is relevant to ¶¶10, 15, 17, and 25–31 of Dr. Frazier’s declaration (Ex. 1018). This testimony is relevant because Dr. Frazier ignores these Summit 6 licenses in opining that commercial success of the Summit 6 patents has not been shown, and further that Dr. Frazier has no opinion regarding the impact of licensing of the patents on the nonobviousness of the Summit 6 patents.

7. In Exhibit 2075, on 18:10–22, Dr. Frazier testified that he did not consider the jury verdict finding that Samsung infringed the ’482 patent and further determined that the ’482 patent was valid. This testimony is relevant to ¶¶10, 15, 17, and 25–31 of Dr. Frazier’s declaration (Exhibit 1018). This testimony is relevant because Frazier ignores this jury finding in opining that “Summit 6 has not provided sufficient data and information to support a conclusion that the Rimfire service achieved commercial success.” (Ex. 1018 at ¶25).

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