

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LINDSAY CORPORATION
Petitioner

v.

VALMONT INDUSTRIES, INC.
Patent Owner

Case No. IPR2015-01039
U.S. Patent No. 7,003,357

**PATENT OWNER'S MOTION FOR OBSERVATION ON CROSS-
EXAMINATION OF PETITIONER'S REPLY WITNESS,
CRAIG ROSENBERG, PH.D.**

EXHIBIT LIST

Exhibit	Description
VALMONT 2001	<i>eBay Enterprise, Inc. and eBay, Inc. v. Lockwood</i> , No. CBM2014-00026 (PTAB 2014), Institution Decision
VALMONT 2002	<i>Kinetic Technologies, Inc. v. Skyworks, Solutions, Inc.</i> , No. IPR2014-00529 (PTAB 2014), Decision Denying Institution of <i>Inter Partes</i> Review
VALMONT 2003	<i>LG Display Co., Ltd. v. Acacia Research Corp.</i> , No. IPR2014-01094 (PTAB 2014), Decision Denying Institution of <i>Inter Partes</i> Review
VALMONT 2004	Merriam-Webster's Collegiate Dictionary, Tenth Addition (2001) (excerpts)
VALMONT 2005	Random House Webster's Unabridged Dictionary, Second Edition (2001) (excerpts)
VALMONT 2006	Professor Melvin Ray Mercer's Declaration
VALMONT 2007	Deposition Transcript of Dr. Rosenberg
VALMONT 2008	OneStat Website Statistics and website metrics Press Room (July 24, 2002)
VALMONT 2009	Kyocera QCP 6035 Specs (Feb. 29, 2008)
VALMONT 2010	Laptop Vs. PDA, eHow article, by David Sandoval
VALMONT 2011	HP iPAQ 2210/2215 Pocket PC 2003 PDA, Mobile Tech Review by Lisa Gade (June 19, 2003)
VALMONT 2012	Apple iBook G3/600 14-inch (Early 2002) review
VALMONT 2013	Zimmatic by Lindsay, Articles list
VALMONT 2014	Brown, PCMag re Sprint PCS TP3000 (February 6, 2001)

VALMONT 2015	Evolution of Cell Phones, Web Designer Depot (May 22, 2009)
VALMONT 2016	Professor Melvin Ray Mercer's CV
VALMONT 2017	List of reviewed materials for Professor Melvin Ray Mercer's Declaration
VALMONT 2018	Professor Melvin Ray Mercer's claim chart for claim 1
VALMONT 2019	Deposition transcript of Craig Rosenberg, Ph.D.

Pursuant to Paper No. 8, Patent Owner submits the following Observations on Cross-Examination of Petitioner's Reply witness, Craig Rosenberg, Ph.D. (Exhibit 2019), which show inconsistencies and errors in Petitioner's reply arguments:

Deposition Section No. 1 (15:12-25)

Q. You just mentioned that handheld is a commonly understood word or term?

A. Yes.

Q. And in [paragraph] 46, you do reference some extrinsic evidence by pointing to a definition from dictionary.com; is that right?

A. That's correct, yes. Small enough to be used or operated while held – while being held in the hand or hands.

Q. Now, this definition from dictionary.com is not from the time of the invention of the '357 patent; right?

A. No.

Observation No. 1

This section of deposition is significant because Dr. Rosenberg concedes that the only support he provides for his purported understanding of the term "handheld" is from an online dictionary definition from over a decade after the time of the invention of the '357 Patent. Accordingly, Dr. Rosenberg's testimony is relevant to the issue of whether he fails to provide any support from the pertinent time period for construing handheld to mean "small enough to be used or operated while held in the hand or hands."

Deposition Section No. 2 (17:6-18:1)

Q. So my question is: If the board disagrees and holds that the definition of handheld requires that only one hand is used, then a laptop would not meet -- would not be a handheld display under that 13 definition; is that right?

A. I would have to give that some more thought to -- to think about that. As I just said, operating a laptop about the size of the laptop that you're using right now would not be feasible to -- if you had one hand tied behind your back, it wouldn't be feasible to operate it unless you could set it on a surface.

Q. And certainly, in neither one of your declarations do you provide any opinions where the word handheld is limited to just one hand?

A. No, I certainly don't say that handheld means that it needs to be one hand. I believe I've always offered the opinion and agreed with the proposed construction held in the hand or hands, which can imply the use of two hands to operate the device too.

Observation No. 2

This section of deposition is significant because Dr. Rosenberg agrees that his opinions are based on a construction of handheld that allows for a handheld device to held and operable “in the hand or hands.” Therefore, if the Board finds that a person of ordinary skill in the art at the time of the invention would have understood “handheld” to refer to devices held and operable in a single hand, Dr. Rosenberg’s testimony is relevant to whether his opinions are entitled to little or no weight, for

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