

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4
5 COXCOM, LLC,) CASE IPR2015-01760
6)
7 Petitioner,) PATENT 6,549,130
8)
9 vs.)
10)
11 JOAO CONTROL & MONITORING)
12)
13 SYSTEMS, LLC,)
14)
15 Patent Owner.) VOLUME II
16 - - - - -)

CONTINUED DEPOSITION OF
RICHARD BENNETT

Friday, April 29, 2016, 9:37 a.m.

Job No. CS2300075

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 Appearing on Behalf of the Petitioner:</p> <p>4</p> <p>5 D. CLAY HOLLOWAY, ESQUIRE</p> <p>6 Kilpatrick Townsend & Stockton LLP</p> <p>7 1100 Peachtree Street, N.E.</p> <p>8 Suite 2800</p> <p>9 Atlanta, Georgia 30309-44528</p> <p>10 404.815.6537 404.541.3484 (Fax)</p> <p>11 E-mail: Cholloway@ktslaw.com</p> <p>12</p> <p>13 Appearing on Behalf of the Patent Owner:</p> <p>14 STEVEN RITCHESON, ESQUIRE</p> <p>15 Insight, PLC</p> <p>16 98000 Topanga Canyon Boulevard</p> <p>17 #347</p> <p>18 Chatsworth, California 91311</p> <p>19 818.882.1030</p> <p>20 E-mail: swritcheson@insightplc.com</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 Raymond Joao</p> <p>24</p> <p>25 INDEX OF EXAMINATIONS</p>	<p style="text-align: right;">Page 4</p> <p>1 RICHARD BENNETT, VOLUME II,</p> <p>2 previously sworn, was examined and testified as</p> <p>3 follows:</p> <p>4 CROSS-EXAMINATION (Continuing)</p> <p>5 BY MR. RITCHESON:</p> <p>6 Q Mr. Bennett, you know you're still under</p> <p>7 oath, correct?</p> <p>8 A Yes, I know.</p> <p>9 Q Did you discuss the testimony you provided</p> <p>10 yesterday or anticipate giving today with anyone?</p> <p>11 A No, I did not.</p> <p>12 Q I think we'll focus today on -- I'm</p> <p>13 handing you a stack of exhibits, but that's not the</p> <p>14 one we're going to focus on -- on Exhibit 8, which</p> <p>15 is the Declaration of Richard Bennett in Support of</p> <p>16 Petition for Inter Partes Review of U.S. Patent No.</p> <p>17 7,397,363. I think you identified this yesterday</p> <p>18 but if you can identify that again.</p> <p>19 Is that the declaration you submitted with</p> <p>20 respect to the '363 patent?</p> <p>21 MR. HOLLOWAY: I just object and let's</p> <p>22 identify --</p> <p>23 MR. RITCHESON: Is there another '363 IPR</p> <p>24 that he's involved with?</p> <p>25 MR. HOLLOWAY: There is another '363 which</p>																					
<p style="text-align: right;">Page 3</p> <p>1 By Mr. Ritcheson Page 4, 71</p> <p>2 By Mr. Holloway Page 41, 76</p> <p>3</p> <p>4</p> <p>5</p> <p>6 INDEX OF EXAMINATIONS</p> <p>7</p> <table border="1"> <thead> <tr> <th>8 NO.</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>9 9</td> <td>Institution Review IPR2015-01762 Coxcom vs. Joao Control & Monitoring</td> <td>5</td> </tr> <tr> <td>10 10</td> <td>US Patent No. 7,397,363</td> <td>16</td> </tr> <tr> <td>11 11</td> <td>Declaration of Richard Bennett In Support of 42 No. 6,549,130</td> <td></td> </tr> <tr> <td>12 12</td> <td>Declaration of Richard Bennett In Support of 43 No. 7,397,363</td> <td></td> </tr> <tr> <td>13 13</td> <td>Declaration of Richard Bennett In Support of 44 No. 7,397,364</td> <td></td> </tr> <tr> <td>14 14</td> <td>Petition For Inter Partes Review of U.S. Patent No. 6,549,130</td> <td>54</td> </tr> </tbody> </table> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	8 NO.	DESCRIPTION	PAGE	9 9	Institution Review IPR2015-01762 Coxcom vs. Joao Control & Monitoring	5	10 10	US Patent No. 7,397,363	16	11 11	Declaration of Richard Bennett In Support of 42 No. 6,549,130		12 12	Declaration of Richard Bennett In Support of 43 No. 7,397,363		13 13	Declaration of Richard Bennett In Support of 44 No. 7,397,364		14 14	Petition For Inter Partes Review of U.S. Patent No. 6,549,130	54	<p style="text-align: right;">Page 5</p> <p>1 he submitted a declaration, yes.</p> <p>2 MR. RITCHESON: I believe this is 1762.</p> <p>3 MR. HOLLOWAY: That works. '363 1762.</p> <p>4 MR. RITCHESON: Thank you.</p> <p>5 MR. HOLLOWAY: Thank you.</p> <p>6 BY MR. RITCHESON:</p> <p>7 Q Mr. Bennett, this is the '363 declaration</p> <p>8 that you submitted. It's in support of petition for</p> <p>9 inter partes review, correct?</p> <p>10 A Correct.</p> <p>11 MR. RITCHESON: Let me see if we have a</p> <p>12 copy of the institutional decision, 1762.</p> <p>13 MR. RITCHESON: Can we mark this.</p> <p>14 (WHEREUPON, Exhibit 9 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. RITCHESON:</p> <p>17 Q I'm handing you a document marked Exhibit</p> <p>18 9. Do you understand this is the institution</p> <p>19 decision that relates to the declaration that you</p> <p>20 have identified for us as Exhibit 8?</p> <p>21 Feel free to look at it.</p> <p>22 A Yes, I do.</p> <p>23 Q You'll note in the middle of the page</p> <p>24 there's a case IPR No. 2015-01762.</p> <p>25 Do you see that?</p>
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<p style="text-align: right;">Page 6</p> <p>1 A I see it.</p> <p>2 Q For convenience, is it all right with you</p> <p>3 if we refer to this institution proceeding as a</p> <p>4 1762?</p> <p>5 A That's fine.</p> <p>6 Q With respect to the declaration that you</p> <p>7 submitted, which is Exhibit 8, my understanding is</p> <p>8 that there were two bases for your belief that the</p> <p>9 claims at issue in 1762 were valid: One is in view</p> <p>10 of Koether, and the other is Koether in view of</p> <p>11 Crater.</p> <p>12 Is that generally correct?</p> <p>13 MR. HOLLOWAY: Object to form.</p> <p>14 A I wouldn't put it that way. I believe</p> <p>15 that the contested claims in this patent are invalid</p> <p>16 because they're anticipated by an enormous body of</p> <p>17 prior art. In fact, the body of prior art that</p> <p>18 anticipates these claims is so vast that it's almost</p> <p>19 incalculable.</p> <p>20 Koether and Crater patents are simply</p> <p>21 examples of that prior art that are particularly</p> <p>22 pertinent to the claims in this patent.</p> <p>23 Q You used the word "anticipate." What does</p> <p>24 the word "anticipate" mean?</p> <p>25 MR. HOLLOWAY: Objection; form.</p>	<p style="text-align: right;">Page 8</p> <p>1 comments that you've made in your declaration with</p> <p>2 respect to the 1762 proceeding are based on what's</p> <p>3 called obviousness; is that correct?</p> <p>4 A Yes.</p> <p>5 Q If we turn to Page 3 of Exhibit 9, for</p> <p>6 example, just so that there is greater clarity with</p> <p>7 respect to this line of questioning, there's a chart</p> <p>8 there. This is from the institution decision that</p> <p>9 was issued by the Patent Trial and Appeal Board,</p> <p>10 correct?</p> <p>11 A Uh-huh. (Affirmative.)</p> <p>12 Q Yes?</p> <p>13 A Yes.</p> <p>14 Q That chart there indicates Koether as a</p> <p>15 challenge alone, combined with information that</p> <p>16 would have been known to a person of ordinary skill</p> <p>17 in the art, and then it lists a series of claims,</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q Then there's Koether and Crater, and</p> <p>21 there's a series of additional claims?</p> <p>22 A Correct.</p> <p>23 Q To the best of your knowledge, is this</p> <p>24 chart accurate?</p> <p>25 A I believe it is.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q As you've used it.</p> <p>2 MR. HOLLOWAY: Same thing.</p> <p>3 A It means that work that was done prior to</p> <p>4 the filing, filing date of this patent.</p> <p>5 Q How does anticipation, as you've described</p> <p>6 it, compare to obviousness?</p> <p>7 A Well, anticipation is simply a location in</p> <p>8 time, and the cumulative effect of multiple</p> <p>9 instances of anticipation is obviousness.</p> <p>10 Q So is it your understanding a combination</p> <p>11 of references is anticipation?</p> <p>12 A I don't believe I would define</p> <p>13 anticipation that way, no.</p> <p>14 Q Do you understand what the meaning of</p> <p>15 anticipation is within the federal patent laws?</p> <p>16 A No, I don't, and I'm not trying to be --</p> <p>17 I'm not a lawyer and I'm not trying to legalize the</p> <p>18 term. I'm just using the ordinary English meaning</p> <p>19 of the word "anticipate."</p> <p>20 Q So when you said there was an enormous</p> <p>21 body of work, I think that anticipated --</p> <p>22 A Precedes. I'll say that.</p> <p>23 Q You mean it precedes it?</p> <p>24 A Uh-huh. Yes.</p> <p>25 Q Just to be clear, though, the specific</p>	<p style="text-align: right;">Page 9</p> <p>1 Q In your declaration, which is again</p> <p>2 Exhibit 8, you describe what you believe would</p> <p>3 qualify one as a person of ordinary skill in the art</p> <p>4 at the time. Do you recall that?</p> <p>5 A I do recall that.</p> <p>6 Q I think it's Paragraph 17?</p> <p>7 A Seventeen and 18.</p> <p>8 Q Seventeen and 18. And in 17, for</p> <p>9 example -- and you've abbreviated a person of</p> <p>10 ordinary skill in the art as POSITA, correct?</p> <p>11 A Yes, I have.</p> <p>12 Q That's the conventional abbreviation for</p> <p>13 that phrase used?</p> <p>14 A I've seen that used several times.</p> <p>15 Q So if I use the term "POSITA," you'll know</p> <p>16 what I'm talking about?</p> <p>17 A I'll understand you're not talking about</p> <p>18 Los Pasitos in California.</p> <p>19 Q Exactly right. If there's ever any</p> <p>20 confusion about a restaurant, you'll let me know.</p> <p>21 With respect to the POSITA, the</p> <p>22 identification of POSITA in 17, you offer that you</p> <p>23 believe that a POSITA would have had a bachelor's</p> <p>24 degree in engineering or equivalent course work and</p> <p>25 at least two years of experience in network systems.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Do you see that?</p> <p>2 A Yes, I do.</p> <p>3 Q Who created this definition of POSITA?</p> <p>4 A I did, but it's -- it probably deserves</p> <p>5 some explanation, because at the time of this</p> <p>6 patent -- I'm putting myself back in 1996 -- by that</p> <p>7 time I had already be a manager in an engineering</p> <p>8 role in hiring people for, say, ten years, and this</p> <p>9 is pretty much the basic job description, and I</p> <p>10 would put in an ad when I was looking to add an</p> <p>11 engineer to my staff.</p> <p>12 Now, the interesting thing about this</p> <p>13 definition is that it says a Bachelor's degree in</p> <p>14 engineering or equivalent course work and I don't</p> <p>15 have a Bachelor's degree in engineering. I have a</p> <p>16 bachelor's degree in philosophy.</p> <p>17 So it doesn't describe me, it describes</p> <p>18 the people that I was hiring at that time. And so</p> <p>19 to understand why I think I'm a POSITA, we have to</p> <p>20 read Paragraph 18, because by 1996 I already had 19</p> <p>21 years of professional engineering work experience,</p> <p>22 and I think strictly on that basis alone I would be</p> <p>23 considered a POSITA, if I had never cracked a single</p> <p>24 book on computer science.</p> <p>25 MR. RITCHESON: I would like to request</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. HOLLOWAY: Objection; form.</p> <p>2 A I developed that -- yes, I did. I mean I</p> <p>3 signed the declaration.</p> <p>4 Q But, for example, did you draft this</p> <p>5 language?</p> <p>6 A I can't recall whether I drafted that or</p> <p>7 it was suggested to me by the attorneys. But in</p> <p>8 either case, this is what the declaration says and I</p> <p>9 signed it.</p> <p>10 Q Well, I understand that. My question is,</p> <p>11 why is this right?</p> <p>12 A I think it's actually not right. I think</p> <p>13 it's a bit too terse, and I think what is missing is</p> <p>14 where it says "Bachelor's degree in engineering," it</p> <p>15 should say "Bachelor's degree in engineering or</p> <p>16 computer science." And where it says "or equivalent</p> <p>17 course work," it should say "or equivalent course</p> <p>18 work or experience."</p> <p>19 Q So you think this should be changed?</p> <p>20 A Yes, I do.</p> <p>21 MR. HOLLOWAY: Objection; form.</p> <p>22 A It could be improved.</p> <p>23 Q With respect to the development of the</p> <p>24 POSITA that's identified in Paragraph 17, can you</p> <p>25 tell me what factors were considered in coming to</p>
<p style="text-align: right;">Page 11</p> <p>1 that entire line of response be stricken as</p> <p>2 nonresponsive.</p> <p>3 BY MR. RITCHESON:</p> <p>4 Q I didn't ask you about you. I know that</p> <p>5 you've had some dialogue about whether you're</p> <p>6 POSITA. I'm not interested in 18. I'm interested</p> <p>7 in 17. And my question was who developed the</p> <p>8 definition of POSITA. That was my only question.</p> <p>9 MR. HOLLOWAY: Objection; form.</p> <p>10 Q Okay.</p> <p>11 MR. HOLLOWAY: Are you asking another</p> <p>12 question?</p> <p>13 Q Do you understand that that was my</p> <p>14 question?</p> <p>15 MR. HOLLOWAY: Objection; form.</p> <p>16 A When you say who developed it --</p> <p>17 Q The definition in 17. I believe you</p> <p>18 testified that you did, correct?</p> <p>19 MR. HOLLOWAY: Objection to form.</p> <p>20 A Well, I said that I think in remarks that</p> <p>21 you've asked to be stricken from the record.</p> <p>22 Q That's what I'm asking you to verify that.</p> <p>23 A So we don't want to refer to remarks that</p> <p>24 have been stricken, do we?</p> <p>25 Q That's why I'm asking you to repeat it.</p>	<p style="text-align: right;">Page 13</p> <p>1 the conclusion this was the appropriate definition?</p> <p>2 A Paragraph 17 is representative to the kind</p> <p>3 of ads I was placing in newspapers and job search</p> <p>4 sites when I was hiring engineers.</p> <p>5 Q Did you consider, for example or was it</p> <p>6 considered, to your knowledge, the educational</p> <p>7 experience and training of Mr. Joao?</p> <p>8 A No, I didn't consider that. I wasn't</p> <p>9 hiring him.</p> <p>10 Q Now, I just want to verify that my</p> <p>11 understanding is correct and we can move on, is that</p> <p>12 with respect to, and looking back at the institution</p> <p>13 decision, and that was at the chart at Page 3, my</p> <p>14 understanding is that the challenged claims based on</p> <p>15 Koether alone, which is the first row, substantive</p> <p>16 row of that table, that all of those claims the PTAB</p> <p>17 determined not to institute on. Is that your</p> <p>18 understanding?</p> <p>19 A That's my understanding.</p> <p>20 Q So for the purposes of today, I'm going to</p> <p>21 focus on the remaining claims, which are Koether and</p> <p>22 Crater, which is in the second substantive row.</p> <p>23 Okay?</p> <p>24 A Okay. It's a peculiar decision on the</p> <p>25 PTAB's part, by the way.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q With respect to your declaration -- and 2 I'm going to move back and forth a little bit 3 between these two documents and the '363 patent, 4 just so you know. 5 With respect to your declaration, I'd just 6 like to get an understanding a little bit, because 7 it is confusing, of the flow diagrams that appear on 8 -- I have it listed as Paragraph 56, or after 9 Paragraph 56. 10 I believe that's page -- it's actually on 11 Pages 26 and 27 of your declaration. 12 A Okay. 13 Q I just want to make sure that I am fully 14 comprehending what these diagrams are intended to 15 communicate. 16 Could you walk us through them, please? 17 A Okay. The first diagram -- 18 Q At the top of 27? 19 A A the top of Page 27 there's a diagram, 20 the title of which is on the previous page. So if 21 we turn back to Page 26. 22 Q Got it. 23 A At the bottom of the page it says Claim 42 24 dash -- I mean slash 84. And that's meant to -- 25 that title is meant to go with the diagram at the</p>	<p style="text-align: right;">Page 16</p> <p>1 Whereas in Claim 1, Claim 1 is not 2 actually what we would call -- well, it's, it's a 3 system in which there is no feedback loop. And I 4 think some people would say that therefore it's not 5 really a control system. It's not a process control 6 system certainly. 7 Claim 1 refers to a vehicle theft oriented 8 apparatus. So a car can be disabled if it's stolen 9 from the cell phone, which is the second processing 10 device. 11 Q This is for which one, I'm sorry? 12 A That's for Claim 1. 13 Q Are you done with your answer? 14 A Yes. 15 Q Let's turn to Claim 1, because I'm having 16 a challenge with a couple of things. 17 I think you said, and I think you just 18 misspoke but I think you said Claim 1 was directed 19 to vehicles. Maybe I'm just reading that wrong, so 20 why don't we have a look at '363. 21 A Is the patent in the record? 22 (Whereupon Exhibit 10 was marked for 23 identification.) 24 BY MR. RITCHESON: 25 Q I think it's Column 104.</p>
<p style="text-align: right;">Page 15</p> <p>1 top. So you have that. That's the pagination 2 error. 3 And so what we have here is the three 4 devices that are called out in both the Claim 42 and 5 Claim 84, which are virtually identical, by the way. 6 The three devices, we have a first processing 7 device, a second processing device, and a 8 communication device. Wherein -- when we compare 9 these two diagrams, first is used in a different way 10 between the two diagrams. So in one instance first 11 is at the premise, and third is at the control 12 center, and in the other case they're inverted. 13 So the text following that in Paragraph 57 14 explains the names and the designations between 15 these devices. So that's one difference, is the 16 different nomenclature, different use of the same 17 nomenclature in the Claim 1 versus Claims 42 and 84. 18 And the other difference is that the 19 apparatus described in Claims 42 and 84 is a closed 20 loop classical control system, in which there's 21 feedback between the control device and the 22 controller, such that the controller can make 23 changes to the control device and the control device 24 advises the controller of how its state is changing 25 over time.</p>	<p style="text-align: right;">Page 17</p> <p>1 A Okay. 2 Q This is a premises claim? 3 A Yes. 4 Q So with respect to your declaration, and 5 I'm putting this up alongside the Claim 1 next to 6 your flow diagram. 7 The first processing device is, as it's 8 listed here, is an intermediary device, correct? 9 That is intermediate between the second and third 10 processing devices? 11 MR. HOLLOWAY: Objection; form. 12 A Well, they're all intermediary to each 13 other. On Claim 1? 14 Q Claim 1. 15 A Yes. The first processing device is an 16 intermediary because the actions in this apparatus 17 are all initiated by the second processing device. 18 Q So the first processing device is, the 19 intermediate device is that the first -- Claim 1 20 describes as being associated with a website. Do 21 you see that? 22 A Yes. 23 Q What is the phrase "associated with a 24 website" mean? 25 What did you understand it to mean when</p>

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