

Petitioners' Response to Observations
on Cross-Examination
IPR2016-00717

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHATSAPP, INC. AND FACEBOOK, INC.
Petitioner

v.

TRIPLAY, INC.
Patent Owner

Inter Partes Review Nos. IPR2016-00717
U.S. Patent No. 8,874,677

**PETITIONERS' RESPONSE TO PATENT OWNER'S
OBSERVATIONS ON TESTIMONY OF MR. KLAUSNER**

Pursuant to the Board's September 7, 2016 Scheduling Order (Paper 16), Petitioners WhatsApp, Inc. and Facebook, Inc. ("Petitioners") respond as follows to TriPlay, Inc.'s ("Patent Owner") Observations on Testimony of Mr. Klausner (Paper 29).

I. RESPONSES TO PATENT OWNER'S "OBSERVATIONS"

The Patent Owner's motion for observation improperly attempts to raise substantive arguments about the merits of the underlying petition. *See* Scheduling Order (Paper 16), at 6; *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012) ("An observation (or response) is not an opportunity to raise new issues, re-argue issues, or pursue objections."). As demonstrated below, the Patent Owner's proposed observations do not relate Mr. Klausner's testimony to any precisely identified argument but instead improperly attempt to raise arguments and address substantive issues. *See Medtronic, Inc. v. Nuvasive Inc.*, IPR2013-00506, Paper 37 at 2-4 (finding that "the motions for observations contain arguments and are excessively long, and, thus, improper"). For the convenience of the Board, the Petitioners will adopt the Patent Owner's numbering.

Response to Observation #1

The Patent Owner argues that Mr. Klausner's testimony "contradicts the

statement that SIP provides no ability to adapt streaming video based on terminal characteristics.” (Observations, at 3.) The Patent Owner mischaracterizes Petitioners' arguments. Petitioners did not argue that “SIP provides no ability to adapt streaming video based on terminal characteristics.” Rather, as expressly stated in the section header to Petitioner's argument at pages 7 to 9 of the Reply Petition, Petitioners more specifically argued that “SIP Streaming Video Transcoding Does Not Adapt Videos for Display Characteristics.” (Petitioners' Reply, at 7 (underlining in original).)

To the extent “the statement that SIP provides no ability to adapt streaming video based on terminal characteristics” refers to a “statement” in Coulombe ¶ 69 rather than an argument made by Petitioners, the patent owner improperly argues for a strained interpretation of the term “recipient's terminal characteristics,” as used in Coulombe ¶ 69, to manufacture an inconsistency with Mr. Klausner's testimony. Coulombe ¶ 69 states:

It is said in SIP that proxies may transcode content. However, the scope of this claim was mainly for multimedia sessions (audio or video calls) where codecs or the bandwidths between users don't match. In that case, the proxy can use the information in SDP to “fill the gap” between the two terminals. There is no mention that such adaptation could take place for messaging applications and no mention that it should be based on recipient's terminal

characteristics.

(Coulombe, Ex. 1003, ¶ 69 (underlining and bolding added).) It is clear that the term “recipient’s terminal characteristics” used in the context of Coulombe ¶ 69 (emphasized in bold above) refers to characteristics other than “codecs.”

Response to Observation #2

The Patent Owner argues that “when read in proper context, the reference to ‘messaging applications’ in the sentence from ¶ 69 of Coulombe cited by Petitioner (i.e., ‘There is no mention that such adaptation could take place for messaging applications and no mention that it should be based on recipient’s terminal characteristics.’) refers to non-session based SIP instant messaging--not session-based SIP video streaming.” (Observations, at 4-5 (underlining in original).) To the extent the Board chooses to consider this improper argument, it should be rejected. The mere reference to the SIMPLE protocol in the next sentence in Coulombe ¶ 69 does not indicate that Coulombe intended to limit the term “messaging applications,” as used in that paragraph, to only “non-session based SIP instant messaging.” The more straightforward interpretation is that the SIMPLE protocol is discussed as an example of existing “messaging applications.”

It is also unclear how this (improper) argument is relevant to what the Patent Owner refers to as “Petitioner’s active discouragement argument at pages 7 to 9 of

the Reply Petition.” (Observations, at 4.) Those pages do not argue that the term “messaging applications” in Coulombe ¶ 69 refers to “session-based SIP video streaming.” (Petitioners' Reply, at 7-9.) In fact, those pages do not contain any references to the term “messaging application” other than in a block quote of Coulombe ¶ 69 on page 7. (*Id.*)

Response to Observation #3

The Patent Owner argues:

“[A] person of ordinary skill would understand” [as Mr. Klausner testified] the “terminal characteristics” disclosed in Coulombe include formats supported and such testimony is contrary to Petitioner’s reading of Coulombe as teaching “SIP provides no ability to adapt streaming video ‘based on the recipient’s terminal characteristics,’” given Coulombe’s teachings (as discussed above) of adapting video where formats supported (a ‘terminal characteristic’) do not match.

(Observations, at 6 (second bracket in original).) To the extent the Board chooses to consider this improper argument, it should be rejected. The Patent Owner asked Mr. Klausner about the use of the term “terminal characteristics” in ¶ 2 of Coulombe and did not ask him about the use of the term “recipient’s terminal characteristics” in ¶ 69. As discussed above in Response to Observation #1, it is clear that the term “recipient’s terminal characteristics,” as used in the context of Coulombe ¶ 69, refers to characteristics other than “codecs.”

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