

Paper No. ____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION, SONY MOBILE COMMUNICATIONS (USA) INC.,
SONY MOBILE COMMUNICATIONS AB & SONY MOBILE
COMMUNICATIONS INC.

Petitioners

v.

CREATIVE TECHNOLOGY LIMITED

Patent Owner

Case No. IPR2016-01407

Patent No. 6,928,433

**PETITIONERS' OBJECTIONS TO
PATENT OWNER'S DEMONSTRATIVES**

On August 25, 2017, Patent Owner served a revised set of demonstrative slides. The parties met and conferred regarding Petitioners' objections on Tuesday, August 22, 2017 and Thursday, August 24, 2017, which resolved some but not all of the objections. Petitioners object to the following slides in Patent Owner's demonstratives.

Demonstrative Slide 11

Petitioners object to demonstrative slide 11 (copied below) because it constitutes additional briefing (serving as an unauthorized, improper sur-reply), and also because it mischaracterizes Petitioners' Reply as arguing that ISO9241-14 provides a motivation to combine by misleadingly quoting a single word ("motiva[tion]") from the statement: "ISO standards ... reinforce overarching design principles ... that would have motivated a POSA *as set forth in the Petition*," when in fact the Reply only cited ISO9241-14 to rebut Patent Owner's legally irrelevant and factually erroneous argument that the '433 patent allegedly solved a problem that was "unidentified" by the prior art, because ISO9241-14 (which was cited in the ISO standards that Patent Owner's own expert discussed) previously identified the same problem allegedly identified in the '433 patent. Reply at 7-9; *see* Paper No. 34 at 3 ("Demonstrative exhibits ... may not introduce new evidence or arguments."); *St. Jude Medical, Cardiology Division v. Bd. of Regents of the Univ. Mich.*, IPR2013-00041, Paper No. 65 at 3 (PTAB Jan. 27, 2014) ("[D]emonstrative exhibits are not an opportunity for additional briefing.").

Petitioners' Reply Arguments Regarding Motivation to Combine Are Improper

- Petitioners now identify ISO9241-14 as providing “motiva[tion]” for a POSA to combine Birrell with Seidensticker’s hierarchical menu structure Reply at 12-13
- This is an improper new reply theory
 - Petition was required to “identif[y] in writing and with particularity, . . . the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim”
35 U.S.C. § 312(a)(3)
 - ISO9241-14 was not part of instituted grounds and not mentioned in any pleading prior to Reply
 - Reply is limited to “respond[ing] to arguments raised in the corresponding opposition” 37 CFR 42.23(b)

Demonstrative Slide 12

Petitioners object to demonstrative slide 12 for the same reasons as demonstrative slide 11 and additionally because one bullet point (shown below) contains testimony that is only “supported” by Patent Owner’s Observation on Cross-Examination No. 11 which, as pointed out in Petitioners’ Response to Observations on Cross-Examination (Paper No. 36) No. 11, is improper because it raises a new and irrelevant argument that Seidensticker teaches away from ISO9241-14. *See St. Jude Medical, Cardiology Division v. Bd. of Regents of the Univ. Mich.*, IPR2013-00041, Paper No. 65 at 3-4 (PTAB Jan. 27, 2014) (finding objections had merit where “arguments [were] supported only by citations to ... Observations on Cross-Examination”) (citing Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012) (“[A]n observation ... is not an opportunity to raise new issues.”))¹.

- **But, Petitioners’ expert admitted that Seidensticker had “functionality” “to support” “navigat[ing] . . . a relatively long list”**

Ex. 2045 at 69:8-17; PO Obs. #11; POR at 15-16

¹ The foregoing citations are provided only once in this paper but apply to each objection to a new argument supported only by Patent Owner’s Observations on Cross-Examination.

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