UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

REALTIME DATA, LLC D/B/A/ IXO,
Patent Owner

Case IPR2016-01737
Patent 8,880,862

PATENT OWNER'S RESPONSE TO PETITIONER'S REPLACEMENT MOTION FOR OBSERVATIONS REGARDING THE CROSS-EXAMINATION TESTIMONY OF DR. GODMAR BACK

Pursuant to the Board's Order (Paper 34) and January 5, 2018 email, Patent Owner Realtime responds to Petitioner Apple's Replacement Motion for Observations (Paper 54).

Realtime objects to Apple's observations because they violate the Office Trial Practice Guide.[1] First, Observations 4 through 9 improperly use Dr. Back's November 2, 2017 cross-examination testimony to address subsequent Realtime briefing and testimony, filed on December 2, 2017. Second, Observations 10, 18, 19, and 21 raise new arguments.

Realtime further objects to Observations 10, 16, 17, 20, 21, and 24 because they impermissibly seek to place the burden of persuasion on Realtime regarding the contingent motion to amend.

RESPONSE TO OBSERVATION 1

Ex. 1046 at 45:18-46:16. The cited testimony is not relevant because Dr. Back was discussing the teachings of the '862 Patent itself, not the prior art references. And this observation takes Dr. Back's testimony out of context. At 44:19-45:3 and 47:1-6 of Ex. 1046, Dr. Back testified that he did not offer an opinion in his declarations on whether the "second memory" in Amended Claim 174 is volatile or non-volatile memory.

[1] 77 Fed. Reg. at 48767-68 (Aug. 14, 2012).

RESPONSE TO OBSERVATION 2

Ex. 1046 at 47:21-48:6, 50:10-51:1. The cited testimony is not relevant because Dr. Back was discussing the teachings of the '862 Patent itself, not the prior art references. And this observation takes Dr. Back's testimony out of context. At 51:9-12 of Ex. 1046, Dr. Back testified that he did not offer an opinion in his declarations on whether the cache 13 in the '862 specification is volatile or non-volatile memory.

RESPONSE TO OBSERVATION 3

Ex. 1046 at 60:12-21. The cited testimony is not relevant because it does not relate to the price of RAM versus flash memory. And this observation mischaracterizes the referenced "statement by Dr. Neuhauser." At 57:9-22 of Ex. 1046, Dr. Back discussed footnote 8 of his June 14, 2017 Declaration (Ex. 2008), which cites to paragraph 44 of Neuhauser's First Declaration (Ex. 1003). Dr. Neuhauser's paragraph 44 refers to the price of flash memory to hard-disk drive, not flash memory to RAM. (Ex. 1003 at ¶ 44.)

RESPONSE TO OBSERVATION 4

Ex. 1046 at 76:22-78:15. This observation mischaracterizes Dr. Back's testimony. At 79:3-18 of Ex. 1046, Dr. Back testified that his opinion on "preloading" in the current IPR is not different from that in the IPR2016-0365 proceeding.

RESPONSE TO OBSERVATION 5

Ex. 1046 at 81:12-82:2. This observation mischaracterizes Dr. Back's testimony. At 79:3-18 of Ex. 1046, Dr. Back testified that his opinion on "preloading" in the current IPR is not different from that in the IPR2016-0365 proceeding.

RESPONSE TO OBSERVATION 6

Ex. 1046 at 82:4-83:8. This observation mischaracterizes Dr. Back's testimony. At 79:3-18 of Ex. 1046, Dr. Back testified that his opinion on "preloading" in the current IPR is not different from that in the IPR2016-0365 proceeding.

RESPONSE TO OBSERVATION 7

Ex. 1046 at 138:13-22. This observation mischaracterizes Dr. Back's testimony regarding when the claimed "preloading" starts and ends. At 114:7-21 and 121:13-122:10 of Ex. 1046, Dr. Back testified that preloading starts before the request for the data is received over the computer bus, and starts before the boot process.

RESPONSE TO OBSERVATION 8

Ex. 1046 at 130:1-132:2. This observation mischaracterizes Dr. Back's testimony regarding when the claimed "preloading" starts and ends. At 114:7-21 and 121:13-122:10 of Ex. 1046, Dr. Back testified that preloading starts before the

request for the data is received over the computer bus, and starts before the boot process.

RESPONSE TO OBSERVATION 9

Ex. 1046 at 120:13-121:11. This observation mischaracterizes Dr. Back's testimony regarding when the claimed "preloading" starts and ends. At 114:7-21 and 121:13-122:10 of Ex. 1046, Dr. Back testified that preloading starts before the request for the data is received over the computer bus, and starts before the boot process.

RESPONSE TO OBSERVATION 10

Ex. 1046 at 145:8-146:12, 148:2-8, 149:15-150:4. The cited testimony is not relevant because, at the time of Dr. Back's November 2, 2017 testimony (Ex. 1046), Apple had never argued that Settsu's function definition file would be used to load and initialize some OS modules prior to others, to allow specific processes to occur faster during boot. Also, this observation mischaracterizes Dr. Back's testimony. The cited testimony was discussing the specific combination proposed by Apple and Dr. Neuhauser.

RESPONSE TO OBSERVATION 11

Ex. 1047 at 112:19-113:4, 113:6-13. This observation fails to provide the full context of Dr. Back's testimony. At 113:15-114:11 of Ex. 1047, Dr. Back testified a POSITA would not have understood Kroeker's request for data must occur during the boot process. At 117:9-118:8 and 119:5-120:13 of Ex. 1047, Dr.

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