

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2016-01737
Patent 8,880,862

**PETITIONER'S MOTION FOR OBSERVATIONS REGARDING THE
CROSS-EXAMINATION TESTIMONY OF DR. GODMAR BACK**

Apple, Inc. (“Petitioner”) respectfully submits this motion for observations regarding the cross-examination of Dr. Godmar Back. Petitioner’s observations, set forth below, concern the 11/2/17 and 12/7/17 testimony of Dr. Back, which is presented in its entirety in Exs. A-1046, and A-1047, respectively.

OBSERVATION 1: Dr. Back testified that a POSITA would have been encouraged to use RAM for preloading, and would have been discouraged from using flash, due to the high cost of flash and its slower speed.

In Ex. A-1046 at 45:18-46:16, when asked whether the second memory claimed in Amended Claim 174 could be either volatile or non-volatile memory, Dr. Back testified on cross-examination that “[a] person of skill in the art would not think of using non-volatile memory for its higher cost [or] for its slower rate of access speed;” instead, “all the embodiments of the patent envision the use of volatile memory.” This is relevant because Patent Owner relies on Dr. Back’s contrary later testimony, from his declaration of 12/1/17, to support their arguments that considerations of speed and cost would have dissuaded a POSITA from adding RAM to Sukegawa’s system for purposes of preloading, as proposed in Petitioner’s combinations of Sukegawa with Dye and Kroeker, and of Sukegawa with Dye and Esfahani. *See* Pap. 39, 2-7; Ex. 2027, ¶¶10-69.

In Ex. A-1046 at 47:21-48:6, Dr. Back testified on cross-examination that “[p]referably, the cache 13 is implemented in SDRAM, which I have pointed out a person of skill in the art would understand to be volatile memory.” In Ex. A-1046

at 50:10-51:1, when asked why it would be preferable to implement cache 13 in SDRAM, Dr. Back testified on cross-examination that “[v]olatile memory is faster, is cheaper, and, most importantly, for the method of preloading envisioned in the '862 patent, the use of non-volatile memory is neither necessary, nor beneficial.” This is relevant because Patent Owner relies on Dr. Back’s contrary later testimony to support their speed and cost arguments against Petitioner’s Sukegawa-based combinations. *See* Pap. 39, 2-7; Ex. 2027, ¶¶10-69.

In Ex. A-1046 at 58:9-59:1, when asked whether it was his opinion that flash memory was expensive on a per bit basis at the time of invention relative to volatile memory, Dr. Back testified on cross-examination that “a person of ordinary skill would probably be discouraged from the use of non-volatile memory for a number of reasons, one of which is the higher price of the memory.” This is relevant because Patent Owner relies on Dr. Back’s later testimony to support their argument that “DRAM was more expensive than flash on a per-megabyte basis, or at least equally as expensive—not less.” Pap. 39, 4; Ex. 2027 ¶¶ 25-28.

In Ex. A-1046 at 60:12-60:21, when asked whether he agreed or disagreed with a statement by Dr. Neuhauser that flash memory based designs were expensive on a per bit basis at the time of invention, Dr. Back testified on cross-examination that “I think that I would not have cited to this statement if I had disagreed with it.” This is relevant because Patent Owner relies on Dr. Back’s

later testimony to support their argument “that DRAM was more expensive than flash on a per-megabyte basis, or at least equally as expensive—not less.” Pap. 39, 4; Ex. 2027 ¶¶ 25-28.

In Ex. A-1046 at 64:5-64:15, Dr. Back testified on cross-examination that “[t]he use of non-volatile memory is not necessary or beneficial for the preloading mechanism envisioned by the '862 patent specification,” and that “I do believe that a person of skill in the art would have been discouraged from the use of non-volatile memory because it is slower and likely also more expensive.” This is relevant because Patent Owner relies on Dr. Back’s contrary later testimony to support their speed and cost arguments against Petitioner’s Sukegawa-based combinations. *See* Pap. 39, 2-7; Ex. 2027, ¶¶10-69.

In Ex. A-1046 at 65:18-66:3, when asked whether it was his opinion that a POSITA would have found it preferable to implement cache 13 as described by the '862 patent in RAM, Dr. Back testified on cross-examination that “[i]t is my opinion that that is what the patent specification says.” In Ex. A-1046 at 65:5-67:2, when asked why RAM would be preferable, Dr. Back testified on cross-examination that the reasons include “the slower speed and likely the high expense associated with non-volatile memory.” In Ex. A-1046 at 68:13-69:2, when asked if a POSITA would be encouraged to use volatile memory, Dr. Back testified on cross-examination “[y]es, I do think that.” In Ex. A-1046 at 117:20-118:9, Dr.

Back testified on cross-examination that “non-volatile memory is slower.” This is relevant because Patent Owner relies on Dr. Back’s contrary later testimony to support their speed and cost arguments against Petitioner’s Sukegawa-based combinations. *See* Pap. 39, 2-7; Ex. 2027, ¶¶10-69.

OBSERVATION 2: Dr. Back testified that a POSITA would have had the same understanding of the meaning of the term “preloading” when reading the claims of U.S. Patent No. 7,181,608 and the amended claims of the '862 Patent.

In Ex. A-1046 at 76:22-78:15, when asked whether he had provided an opinion on the meaning of the term “preloading” at paragraph 47 on page 18 of his IPR2016-01365 declaration in support of Patent Owner’s response, Dr. Back testified on cross-examination “let me be specific what I am doing the section is ... I am construing the term ‘preloading’ as it would be understood by a person skilled in the art reading the claims and the specification of the '608 patent....” In Ex. A-1046 at 81:12-82:2, when asked whether the '608 and '862 patents share the same specification, Dr. Back testified on cross-examination that “[y]es, I do think that those two patents share the same specification.” In Ex. A-1046 at 82:4-83:8, when asked whether a person of ordinary skill would have had the same understanding of the meaning of the term “preloading” when reading the claims of the '608 patent and the amended claims of the '862 patent, Dr. Back testified on cross-examination that “I would say they would have the same understanding.” This is relevant because Patent Owner relies on Dr. Back’s testimony to support their arguments

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