

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2016-01738
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:

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 testimony to support their arguments that the prior art does not render obvious the substitute claims. Pap. 33, 10-12.

OBSERVATION 2:

In Ex. A-1046 at 47:21-48:6, Dr. Back testified on cross-examination that “the cache may comprise volatile or non-volatile memory or any combination thereof,” but 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 testimony to support their arguments that the prior art does not render obvious the substitute claims. Pap. 33, 10-12.

OBSERVATION 3:

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 testimony to support their arguments that the prior art does not render obvious the substitute claims. Pap. 33, 10-12.

OBSERVATION 4:

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....”

This is relevant because Patent Owner relies on Dr. Back's testimony to support their arguments that prior art and combinations of prior art applied to the proposed substitute claims would not meet a construction of "preloading" that is different from the construction previously submitted by Patent Owner and Dr. Back in the related IPR2016-01365 proceeding. Pap. 33, 2-8; Pap. 41, 10-11; Ex. 2025, ¶¶13-16; Ex. 2027, ¶¶70-84.

OBSERVATION 5:

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." This is relevant because Patent Owner relies on Dr. Back's testimony to support their arguments that prior art and combinations of prior art applied to the proposed substitute claims would not meet a construction of "preloading" that is different from the construction previously submitted by Patent Owner and Dr. Back in the related IPR2016-01365 proceeding. Pap. 33, 2-8; Pap. 41, 10-11; Ex. 2025, ¶¶13-16; Ex. 2027, ¶¶70-84.

OBSERVATION 6:

In Ex. A-1046 at 82:4-83:8, when asked whether a POSITA 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 that prior art and combinations of prior art applied to the proposed substitute claims would not meet a construction of “preloading” that is different from the construction previously submitted by Patent Owner and Dr. Back in the related IPR2016-01365 proceeding. Pap. 33, 2-8; Pap. 41, 10-11; Ex. 2025, ¶¶13-16; Ex. 2027, ¶¶70-84.

OBSERVATION 7:

In Ex. A-1046 at 138:13-22, Dr. Back testified on cross-examination that “preloading has to occur, prior to host system reset.” This is relevant because Patent Owner relies on Dr. Back’s testimony to support their arguments that Settsu does not “preload” because it “only begins loading boot data after receiving a request over [a] computer bus,” and that Esfahani does not “preload” because “its boot data is loaded into volatile RAM only after the CPU, system bus, and a low-level firmware OS have all been initialized.” Pap. 33, 4-8; Pap. 41, 10-12; Ex. 2025, ¶¶13-15, 61; Ex. 2027, ¶¶70-77, 84.

OBSERVATION 8:

In Ex. A-1046 at 130:1-132:2, when asked about description at column 20 of the '862 Patent, Dr. Back testified on cross-examination that “if you read further down in the paragraph it lists a number of unique aspects to that technique of data

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