

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

**EXPERT DECLARATION OF DR. GODMAR BACK IN SUPPORT OF
PATENT OWNER'S REPLY TO ITS MOTION TO AMEND**

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I, Godmar Back, declare as follows:

I. INTRODUCTION

1. On June 14, 2017, I submitted a declaration in support of the motion to amend, and the proposed substitute claims, submitted by Realtime Data LLC in this proceeding, in which I explained and concluded that the proposed substitute claims are supported by the original non-provisional application and are patentable over the prior art at issue in this proceeding, as well as the material art discussed during prosecution.

2. I understand that Apple, Inc. and its expert, Dr. Charles J. Neuhauser, subsequently submitted a response and accompanying declaration, respectively. I also understand that Dr. Neuhauser was cross-examined with respect to the opinions set forth in that declaration. I have been asked to consider Apple's arguments, Dr. Neuhauser's declaration (Ex. 1030), and Dr. Neuhauser's cross-examination testimony (Ex. 2024) to determine whether those materials affect the analysis and conclusions stated in my declaration of June 14, 2017. I have additionally been asked to review the Reply in support of Patent Owner's Motion to Amend submitted concurrently with this declaration. For the reasons explained in this declaration, my opinions remain unchanged, and the arguments and evidence submitted by Apple, as elucidated by Dr. Neuhauser's cross-examination testimony, further support my conclusion that the proposed substitute claims are patentable.

3. In forming my opinions, I have reviewed and considered the materials identified in the paragraph above, those identified in my prior declaration of June 14, 2017, and relevant portions of Apple's invalidity contentions from the district court litigation (Ex. 1039).

4. My opinions are based on my experience and knowledge of the relevant art, the documents identified above, as well as the documents discussed in this declaration.

5. In this declaration, I address Apple's prior art references and unpatentability theories. My decision to discuss below only certain shortcomings of those references or theories should not be understood as a concession that those references or theories teach other limitations of the proposed amended claims that are not specifically discussed. Additionally, I cite to deposition testimony from Dr. Neuhauser taken in both this proceeding and in co-pending IPR2016-01737. *See* Ex. 2024. The proposed substitute claims at issue in this proceeding are similar, but not identical, to the proposed substitute claims in IPR2016-01767. I understand that, in some of the cited and quoted testimony, Dr. Neuhauser is specifically discussing the opinions he provided in co-pending IPR2016-01737. But I nonetheless understand that Dr. Neuhauser testified that he intended his opinions to be consistent across the proposed substitute claims in the two proceedings:

Q. Essentially, with respect to the same elements and limitations as between Claim 174 and Claim 118, you have the same opinions across your two declarations, right?

[A.] I think it's fair to say that the structure of the opinions is the same. There's some little details differ because the claims are actually a little bit different. They are basically the same kind of claim, but there's little differences between them.

Q. Your opinion as to what constitutes preloading is the same as between Claim 118 and 174, right?

[A.] With respect to Settsu, Settsu and Zwiegincew?

Q. Yes.

A. I think that's correct.

Q. And your opinion as to what constitutes transferring the portion of the operating system is the same as between Claims 118 and 174?

A. Yes, I think that's correct.

Q. And your opinion as to what is the portion of the operating system is the same as between Claims 118 and 174?

A. Yes, that's correct.

Q. And your opinion as to what is a first memory and a second memory is the same with respect to both Claims 118 and 174?

[A.] Yes, that's correct.

Ex. 2024 at 120:9-121:17.

Q. Let me clarify. Your opinion as to common terms used as between the 174 claim and the 118 claim, and what those terms mean or what is taught about them in the context of the '862 patent is the same, right?

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