

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., SNAP INC., FACEBOOK, INC., and WHATSAPP, INC.,
Petitioner

v.

UNILOC USA, INC. and UNILOC LUXEMBOURG S.A.,
Patent Owner

Case IPR2017-00221¹
Patent 7,535,890

**PETITIONER APPLE INC.'S RESPONSE TO PATENT OWNER'S
MOTION FOR OBSERVATION ON CROSS-EXAMINATION
OF LEONARD FORYS**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

¹ Snap Inc., who filed a petition in IPR2017-01612, as well as Facebook, Inc. and WhatsApp, Inc., who filed a petition in IPR2017-01636, have been joined

Pursuant to the Scheduling Order of May 25, 2017 (Paper 10) and Notice of Joint Stipulation to Modify Due Dates 4 and 5 of December 21, 2017 (Paper 20), Petitioner Apple Inc. presents the following responses to PO's Motion for Observation on Cross-Examination of Leonard Forys ("Obs.," Paper 25).

I. PRELIMINARY COMMENTS

PO's Observations do not comply with the USPTO's guidance for observations requiring "a concise statement of the relevance of identified testimony to an identified argument or portion of an exhibit." OFFICE PATENT TRIAL PRACTICE GUIDE, 77 Fed. Reg. 48744, 48768 (Aug. 14, 2012). PO's Observations contain attorney arguments that raise new issues, re-argue issues, or pursue objections. *See id.* at 48768 ("An observation (or response) is not an opportunity to raise new issues, re-argue issues, or pursue objections"). PO's Observations contain attorney arguments and/or are argumentative, which are not the purpose of observations and should be ignored by the Board. *See Micron Tech., Inc. v. Bd. of Trs. of the Univ. of Illinois*, IPR2013-00005, Paper 46 at 2 (Nov. 26, 2013) (PTAB expunged argumentative Observations). Moreover, many of PO's Observations mischaracterize Dr. Forys' testimony and/or are contradicted by uncited portions of his testimony. By providing its own characterizations of Dr. Forys' testimony, PO's Observations are misleading.

Based on the foregoing, the Board should expunge or give no weight to PO's

improper Observations. Yet, Petitioner responds to individual observations below consistent with the USPTO's guidance on observations, except to the limited extent necessary to respond to PO's arguments that exceed such guidance.

II. INDIVIDUAL RESPONSES

Response to Obs. 1: PO's Obs. 1 is improper and is not being offered to show any inconsistency in testimony; rather, PO simply characterizes the testimony as a way of arguing the claim term "local." First, PO argues that PO's cited portions of Dr. Forys' deposition undermines Petitioner's claim interpretation because "not all types of networks match Dr. Forys' description of a LAN." (Paper 25, p. 2, emphasis added.) But PO's statement is irrelevant because (some of) the challenged claims recite a "local network," not LAN. Petitioner has provided LAN as one example that reads on the "local network" (Ex. 2004², 15:4-7 ("Q. Is it your understanding that a LAN is an example of a local network within the context of the claim? A. Yes.").) Second, PO mischaracterizes Dr. Forys' testimony by stating that "Dr. Forys equated the term 'local network' ... to a LAN having 'certain topologies and certain connections and certain protocols.'" (Paper 25, pp. 1-2.) As noted above, Petitioner

² Exhibit 2004 includes a number of typographical errors most likely caused by the deposition being taken by phone, e.g. (1) On page 4, line 13, Mr. Steve Pappas is a Patent Agent. (2) On page 40, line 20; page 46, line 20; page 63, line 17; page 68, line 11 the transcript should say "BY MR. MANGRUM."

and Dr. Forys have provided LAN as one example that reads on the “local network”. Third, in PO’s cited portions of Dr. Forys’ deposition, Dr. Forys provides an understanding of a LAN, which again can be one example for the “local network” cited in (some of) the challenged claims. This understanding of LAN does not undermine Petitioner’s construction of “external network” meaning “a network that is outside another network.” (Petitioner’s Reply, Paper 17, pp. 1-4.) Finally, PO’s cited portions of Dr. Forys’ deposition do not contradict how Dr. Forys has defined what local and external networks mean. (Ex. 2002, 37:10-13 (“Q. Do the claim terms local network and external network refer to different types of networks? A. Not necessarily.”); 38:5-9 (“A. It says external. External, the way I defined means external to the network that the client is connected to. I believe I give a precise definition, but generally that is what I’m talking about.”); 40:4-11 (“A. ...It depends. It is in reference -- an external means in reference to a referenced network, you’re external to what. And in this particular case, okay, the reference network is a local network. The external network which is something beside that could be an internet. It could also be another local network. It doesn’t say.”).)

Response to Obs. 2: PO’s Obs. 2 is improper and is not being offered to show any inconsistency in testimony; rather, PO simply characterizes the testimony as a way of arguing the claim construction “external network.” PO Obs. 2 refers to Exhibit 2004 page 40, line 21 to page 42, line 10 to argue that Dr. Forys agrees that

“IP network 102 is ‘external’ to IP network 204.” (Paper 25, p. 2.) However, PO does not mention the rest of Dr. Forys’ deposition on page 42 of Exhibit 2004. Dr. Forys testified that “[t]hat’s a labeling convention. That’s the – I think that could be done – although there’s nothing that precludes local IP network 204 from being part of the network as well.” (Ex. 2004, 42:10-15.) Also, in response to the question “[d]oes this preclude the possibility that the local IP network is entirely separate from the Internet as shown?” Dr. Forys testified that “[n]o; that’s a possible interpretation, but it’s not the only interpretation.” (*Id.* at 42:16-22.) Further, PO’s statement that “the ’890 patent (and hence all the challenged patents) illustrates and describes an ‘external network’ as claimed, at least under Petitioner’s claim interpretation” (Paper 25, pp. 2-3) further confirms Petitioner’s claim construction of “external network” meaning “a network that is outside another network.” Finally, in the Petitioner’s Reply, Petitioner stated that “’890 Patent FIG. 5 shows ‘local IP network’ and/or an ‘IP network (Internet).’ Yet this embodiment does not explicitly refer to an ‘external network.’ (’890 Patent, 15:28-38; EX1003, ¶68.) But neither disclosure supports PO’s narrow construction that ‘local’ and ‘external’ refers to ‘distinct *types* of networks.’” (Reply, p. 2, emphasis in original.) Dr. Forys’ statements do not contradict the Petitioner’s Reply.

Response to Obs. 3: PO’s Obs. 3 is improper and is not being offered to show any inconsistency in testimony or the arguments made by the Petitioner; and it

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