

Filed on behalf of Valencell, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,
v.
VALENCELL, INC.,
Patent Owner.

Case IPR2017-00318
U.S. Patent No. 8,886,269¹

**PATENT OWNER'S MOTION FOR OBSERVATION ON CROSS-
EXAMINATION OF REPLY DECLARANT BRIAN W. ANTHONY**

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¹ This proceeding is joined with IPR2017-01554.

I. OBSERVATIONS

Patent Owner submits the following observations on the December 20, 2017, cross-examination of Petitioner's reply declarant, Dr. Brian W. Anthony. The transcript of Dr. Anthony's December 20, 2017, deposition filed as Ex. 2150 ("Dec. 20 Tr."), which includes testimony for both IPR2017-00317 and IPR2017-00318.

Observation 1:

In Dec. 20 Tr., on page 173, line 6 through page 174, line 20, Dr. Anthony testified as follows:

Q. So in your opinion what is element 7? Is it microcomputer? Is it a CPU? Is it a signal processor? Because you've labeled it as all three of those things.

A. It's performing processing. So those are largely interchangeable. Said a processing unit, microprocessor, a signal processor -- a CPU can process signals. A microprocessor can process signals. I was, I guess, maybe a little -- using those -- the broader terms of them being able to process signals.

Q. And it's still your opinion that that element 7 is not Velcro.

A. As I labeled here, it's a microcomputer, CPU, signal processor.

Q. What is element 1 in Figure 11?

A. Drawing the direct analog I had with Swedlow, could be the adhesive connecting it to the rest of the base, representative of the rest

of the base to which the -- the rest of the ring to which this is coming from.²

This testimony is relevant to Dr. Anthony's credibility relating to his identification of the components of Fig. 11 of Asada at pages 13-16 of the -318 Reply. This testimony is relevant because it shows Dr. Asada's inconsistent identification of the elements of Fig. 11; moreover, in his prior deposition, Dr. Anthony identified element 1 as "biocompatible elastic material" instead of an "adhesive" as he called it in this deposition. -318 IPR, Ex. 2010 at 133:10-12.

Observation 2:

In Dec. 20 Tr., on page 163, lines 9-19, Dr. Anthony testified as follows:

Q. We talked a lot in your prior deposition about the identification -- or lack thereof -- of the enumerated elements in Figure 11.

Do you remember that?

A. I do.

Q. And then after your deposition, after your two depositions in September, did you communicate with Doctor Asada to try to determine what the components in Figure 11 are?

A. I did not. I felt I knew what the components were as I had labeled them here.

² For brevity and clarity, objections from counsel have been omitted, without notation, from the deposition excerpts in this paper.

This testimony is relevant to show Petitioner's and Dr. Anthony's credibility relating to their identification of the components of Fig. 11 of Asada at pages 13-16 of the -318 Reply. This testimony is relevant because it shows Dr. Anthony's willful blindness to the facts of Asada's Fig. 11, despite having those facts readily available to him.

Observation 3:

In Dec. 20 Tr., on page 115, line 8 through page 118, line 5, Dr. Anthony testified as follows:

Q. And Doctor Asada is in the same department with you at MIT; correct?

A. Correct. He's in the department of mechanical engineering, which is one of the departments I'm appointed in.

Q. Did you walk down to Doctor Asada's office and ask him why a tethered version of prototype B was required?

A. I did not, and I believe you asked that in my earlier deposition. I didn't feel a person skilled in the art would need to go talk to Doctor Asada to understand his paper here.

Q. Well, you're -- you're just guessing at a reason why, and the actual source of the information is a colleague of -- of yours, and you just decided not to go ask him for that information?

A. I was asked to form my own opinion. I didn't feel it was necessary. My -- what a person skilled in the art would have understood from this was as covered in here.

Q. So after your deposition – since September you didn't take the opportunity to go speak to Doctor Asada about this reference in figuring out.

A. I -- I have not.

Q. And why is that?

A. Didn't feel it was necessary.

Q. And -- and you testified in your prior depositions that you introduced Apple's counsel to Doctor Asada via email; correct?

A. That was correct.

This testimony is relevant to Petitioner's attempt to discredit Patent Owner's argument that the wireless device of Asada was prohibited from use in a hospital environment at page 27 of the -317 Reply and page 28 of the -318 Reply.³ This testimony is relevant because it shows Dr. Anthony's willful blindness to the actual facts of Asada, and because it shows that Petitioner's counsel had access to the facts of Asada and chose not to supply those facts in this proceeding and instead relied on assumptions from Dr. Anthony.

Observation 4:

In Dec. 20 Tr., on page 164, lines 6-22, Dr. Anthony testified as follows:

Q. What relational information is added by the dashed rectangle shown in light transmissive layer 3, in your opinion?

³ For ease of cross-referencing between the IPR2017-00317 and -00318, Patent Owner has included citations to both matters, where applicable.

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