

FILED UNDER SEAL - PROTECTIVE ORDER MATERIAL

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.

Petitioner

- vs. -

FALL LINE PATENTS, LLC

Patent Owner

IPR2018-00043

U.S. Patent 9,454,748

PETITIONER'S RESPONSE TO
PATENT OWNER'S OBSERVATIONS

I. Introduction

Petitioner Unified Patents Inc. ("Unified") submits this Response to Patent Owner's Observations on Cross-Examination of Mr. Kevin Jakel (Paper 30). A Motion for Observation is intended to "draw the Board's attention to relevant cross-examination testimony" but "is not an opportunity to raise new issues, re-argue issues, or pursue objections." *See* Paper 7, p. 5; Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). Each of Patent Owner's observations include attorney argument or mischaracterizations of Mr. Jakel's testimony, and omissions of other relevant portions of Mr. Jakel's testimony that provide the full context of each issue. Unified therefore objects to Patent Owner's improper use of its observations and provides below proper context for each observation and the mischaracterizations of Mr. Jakel's testimony.

Response to Observation #1

Patent Owner omits that Mr. Jakel testified the proportion of Petitioner's revenue that is spent on IPRs as compared to other deterrence activities is because "IPR activities are just, they are expensive. So, they make up the most expensive aspect of what we do." Ex. 2009, 158:21–159:11. Also, Mr. Jakel testified that "In terms of employees, I think there are as many employees that spend their time on other things besides IPRs, than, as we do people who are dedicated exclusively to IPRs." Ex. 2009, 159:16–160:2.

Response to Observation #2

The cited testimony is not relevant to Patent Owner's proposition, because, as outlined in Petitioner's RPI Reply (Paper 22) at 7–8, the Trial Practice Guide provides that membership in an association, alone, does not make an entity an RPI.

Response to Observation #3

Patent Owner omits that Mr. Jakel testified that contracts with members do not “obligate Unified to spend a certain percentage of the money that they receive on deterrence activities” and do not “require Unified Patents to spend any particular amount of money on deterrence activities.” Ex. 2009, 61:2–10. Rather, Unified is “hired to do deterrence for a zone.” Ex. 2009, 67:17–20. Mr. Jakel's testimony is unequivocal in stating, for example, that “We don't do anything on behalf of our members. We work on behalf of the zones that we work for.” Ex. 2009, 94:8–15.

Response to Observation #4

The cited testimony does not support Patent Owner's proposition that “members hire Petitioner to perform deterrence services, *including filing IPRs.*” Observations, p. 3 (emphasis added). The cited testimony discusses “deterrence for a zone” and deterring NPE activity, but does not mention filing IPRs. Further, as Mr. Jakel testified, “we sell memberships to the zone...we use the money they give us to generate a deterrence on behalf of the zone,” that “Unified performs many NPE deterrent activities including data analytics, prior art searching, prior art contests,

validity and patentability analyses and post grant review requests” and confirmed that “we do all of those things and we think that all of those things have an impact. Exactly which impact has the greatest impact or the greatest deterrent impact at any given moment, I’m not sure.” Ex. 2009, 59:23–60:8, 158:1–159:11.

Response to Observation #5

The cited testimony does not support Patent Owner’s proposition. Unified is obligated to reduce NPE activity in a technology zone and has no obligation to perform deterrence effects on behalf of its “zone members.” Mr. Jakel’s testimony is unequivocal in stating, for example, that “We don’t do anything on behalf of our members. We work on behalf of the zones that we work for.” Ex. 2009, 94:8–15. As Mr. Jakel also testified, Unified’s activities benefit all companies within a technology zone, whether the company is a member of the zone or a non-member: “we are working on behalf of the zones. I mean, everyone ultimately gets a benefit by the way. We claim that even, even nonmembers get a benefit when we settle a license to settle an IPR on the patent....So we think everyone benefits.” Ex. 2009, 124:20–125:10.

Response to Observation #6

The cited testimony does not support Patent Owner’s proposition. Rather, Mr. Jakel’s testimony is unequivocal in stating, for example, that “We don’t do anything

on behalf of our members. We work on behalf of the zones that we work for.” Ex. 2009, 94:8–15.

Response to Observation #7

The cited testimony does not support Patent Owner's proposition and does not consider Mr. Jakel's full testimony. Mr. Jakel testified that Unified maintains memberships by describing its work “on behalf of the zone” and not on behalf of any member. Ex. 2009, 110:1–21. Thus, the deterrence generated for a zone maintains memberships, not simply filing IPRs as alleged.

Response to Observation #8

Patent Owner's observation omits facts. As detailed above in the Response to Observation #7, Mr. Jakel testified that Unified maintains memberships by describing its work “on behalf of the zone” and not on behalf of any member. Ex. 2009, 110:1–21.

Response to Observation #9

Patent Owner's observation omits facts. Petitioner does not spend subscription fees on behalf of its members. As Mr. Jakel testified, “we are not doing work on behalf of members.” Ex. 2009, 123:24–124:12; *see also* 94:8–15. Rather, as Mr. Jakel testified, Unified's revenue is spent on deterrence activities for a zone: Unified has a meeting “that says this is what we did the last year as all of our deterrence work; this is what we are doing *in a particular zone*. And as I kind of

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