

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

UNILOC LUXEMBOURG S.A.¹,

Patent Owner

IPR2018-00282

Patent 7,092,671 B2

**PETITIONER'S RESPONSE TO PATENT OWNER'S MOTION FOR
OBSERVATION ON THE CROSS-EXAMINATION DEPOSITION
TESTIMONY OF MARC BREVERMAN**

¹ According to Patent Owner's Updated Mandatory Notice, Paper 9, the owner of this patent is Uniloc 2017 LLC.

This response is submitted in view of the Scheduling Order entered June 8, 2018 (Paper 8) and the parties' Joint Stipulation to Modify Due Dates filed February 1, 2019 (Paper 20). This paper responds to Patent Owner's Motion for Observation on Cross Examination of Marc Breverman (Paper 25) ("Patent Owner's Observations") filed on February 12, 2019, in the present *inter partes* review.

I. Petitioner's Objections

Patent Owner's Observations disregard the Office Patent Trial Practice Guide's requirements, and instead, Patent Owner uses the Observations to further brief Patent Owner's arguments, such as "the striking similarities between the expert reports in this IPR (the 'Apple IPR') and the Unified IPR (IPR2018-2018-00199)," and "coordination between the two experts...." Patent Owner's Observations, pp. 2 and 4. As such, Patent Owner's Observations are improper and should be expunged. *See Xilinx, Inc. v. Papst Licensing GMBH & CO., KG*, IPR2016-00104, Paper 22, pp. 9-10 (P.T.A.B. May 3, 2017) (expunging Patent Owner's Motion for Observation because "Patent Owner did not provide the substantive information required by the Guidelines" and "Patent Owner's Motion for Observation is non-compliant, constitutes additional unauthorized briefing, and is not entitled to consideration.").

II. Petitioner's Responsive Observations

To the extent the Board considers the substance of Patent Owner's observations, Petitioner directs the Board's attention to the following testimony rebutting Patent Owner's allegations:

a. Observation #1

In Exhibit 2003, on pages 12 to 13, lines 24 to 4, Mr. Breverman testified:

Q. Were you personally involved in coordinating Apple's defense of that lawsuit?

MR. McDOLLE: I'm going to object as calling for privilege information. I'll let the witness answer that "Yes" or "No."

THE WITNESS: Yes.

This testimony is relevant to the issue regarding Mr. Breverman's personal knowledge, as argued on pages 2 through 4 of Patent Owner's Observations. The testimony is relevant because it shows that Mr. Breverman does have personal knowledge to support his declaration that Apple did not collaborate with Unified Patents, Inc. ("Unified") with respect to the present *inter partes* review and IPR2018-00199.

b. Observation #2

In Exhibit 2003, on pages 58 to 59, lines 25 to 6, Mr. Breverman testified:

Q. Who selected the prior art asserted in the Apple IPR?

A. Apple.

Q. Okay. What individual within Apple selected the prior art asserted in the Apple IPR?

A. I control the selection of the prior art asserted in this Apple IPR.

This testimony is relevant to the issue regarding Mr. Breverman's personal knowledge, as argued on pages 2 through 4 of Patent Owner's Observations. The testimony is relevant because it shows that Mr. Breverman does have personal knowledge to support his declaration that Apple did not collaborate with Unified with respect to the present *inter partes* review and IPR2018-00199.

c. Observation #3

In Exhibit 2003, on page 13, lines 16 to 19, Mr. Breverman testified:

Q. During -- during the time that you oversaw defense of the Uniloc-Apple litigation on the '671 patent, did you have any communication with Unified?

A. No.

This testimony is relevant to the issue regarding Mr. Breverman's personal knowledge, as argued on pages 2 through 4 of Patent Owner's Observations. The testimony is relevant because it shows that Mr. Breverman does have personal knowledge to support his declaration that Apple did not collaborate with Unified with respect to the present *inter partes* review and IPR2018-00199.

d. Observation #4

In Exhibit 2003, on page 13, lines 23 to 25, Mr. Breverman testified:

Q. During -- during that period did you have any communication with Unified Patents?

A. No.

This testimony is relevant to the issue regarding Mr. Breverman's personal knowledge, as argued on pages 2 through 4 of Patent Owner's Observations. The testimony is relevant because it shows that Mr. Breverman does have personal knowledge to support his declaration that Apple did not collaborate with Unified with respect to the present *inter partes* review and IPR2018-00199.

e. Observation #5

In Exhibit 2003, on page 43, lines 5 to 25, Mr. Breverman testified:

Q. Do you have personal knowledge of all of Apple's communications with Unified Patents?

A. With respect to all communications about the Apple IPR, Unified IPR, and the '671 patent, yes.

Q. Have you personally communicated with Unified concerning Apple's membership with Unified Patents?

A. No.

Q. Have you personally communicated with Unified Patents concerning any Apple IPRs?

A. No.

Q. Have you personally communicated with Unified Patents concerning any Apple patents?

A. No.

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