

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,

Petitioner,

v.

DIRECTSTREAM, LLC,

Patent Owner.

IPR2018-01605, IPR2018-01606 and IPR2018-01607

U. S. Patent 7,620,800 B2

**PATENT OWNER DIRECTSTREAM, LLC'S OPPOSITION TO
PETITIONER MICROSOFT'S MOTION TO COMPEL AND STRIKE**

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Patent Owner opposes Petitioner’s Motion to Compel and Strike (“Motion”). The Motion is premised upon flat mischaracterizations of the deposition—Patent Owner’s counsel *never* instructed the witness not to answer solely on the basis of “form” objections.¹ The Motion fails because Microsoft does not demonstrate the relevance of the testimony it seeks to compel, and because the proposed deposition questions are far outside the scope of Mr. Huppenthal’s declaration testimony. Microsoft has not met its burden and is not entitled to any relief on this Motion.

A. **Huppenthal’s Declaration Testimony is Limited to Personal Knowledge Regarding Background Technology and Related Facts.**

Huppenthal’s declaration is limited to his personal knowledge and background facts—providing a general technological context of the inventions claimed in each of the challenged patents. *See* EX2101 (“Decl.”) ¶¶32-37, ¶¶48-69, ¶¶80-86. He provides no expert opinions. *Id.* ¶2. His declaration does not discuss (i) any legal issues, (ii) the specification of the patents in any substantial manner, (iii) the scope of any patent claims, (iv) the legal meaning of any claim terms, or (v) any comparison of the patents or patent claims to any prior art references. EX1073 (“DepoTr.”) 7:4-10:24, 48:20-50:3, 106:14-22.

¹ *Compare* Mot. at 1-3 with Depo.Tr. 57:21-60:4; 99:8-100:9; 116:20-117:9

(outside the scope objections); 100:23-24 (classified national security objections).

Microsoft's cross examination must be limited to the scope of Huppenthal's declaration. *See* 37 C.F.R. §42.53(d)(5)(D)(ii). If Microsoft intends to take discovery beyond the scope of the declaration, it must move for additional discovery and meet its burden of proof under the "*Garmin* factors." *See* 37 C.F.R. §42.51(b)(2); *Garmin Int'l, Inc. v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 26 at 6-16 (precedential). But, Microsoft has not done so.

B. Microsoft's Questions Regarding the "Memory Interconnect Fabric" Are Outside the Scope of Huppenthal's Declaration.

The Huppenthal declaration provides technical background regarding the use of a "crossbar switch" in the CRAY-3 computer and modifications to the crossbar switch required to build the SRC-6 computer that underlies each of the patents challenged. *See* Decl. ¶¶19, 30, 32-35. Microsoft questioned Huppenthal on the crossbar switch, and Huppenthal answered *all* of these questions. *See, e.g.*, Depo.Tr. 12:9-36:7, 51:20-57:7. Microsoft was not denied full and fair cross-examination regarding Huppenthal's testimony regarding the crossbar switch and related hardware structures.

Microsoft, however, went outside the scope of Huppenthal's declaration by asking questions about the meaning of "memory interconnect fabric" as that phrase is used in certain challenged patents. Depo.Tr. 57:21-59:11. Yet, the Huppenthal declaration does not mention "memory interconnect fabric" and does not connect the crossbar switch testimony to the "memory interconnect fabric" of the challenged

patents. Tellingly, Petitioner’s counsel tacitly acknowledged that Huppenthal’s declaration testimony does not relate to the patent claims or claim construction when he stipulated during the deposition that “I won’t ask him about the claims.” Depo.Tr. 59:7-8.

Yet, Petitioner now moves to compel the same testimony on the basis that ostensibly it is relevant to claim construction for a means-plus-function claim term found only in the ’152 and ’110 Patents. *See* Mot. at 1-2. Thus, this portion of the Motion has no conceivable relevance outside IPR2018-01599 and -01600. Moreover, Microsoft’s only support for its assertion that the testimony is relevant to claim construction is one sentence of *attorney speculation* that the crossbar switch described in the declaration “bears striking resemblance” to the memory interconnect fabric disclosed in the patents. Mot. at 1. During the deposition, Microsoft made no attempt to ask questions that might lay an evidentiary foundation for this assertion, but instead merely asked: “And so what is a memory interconnect fabric?” Depo.Tr. 57:21.

Even if there were some connection between the two, the proposed testimony is irrelevant to claim construction for the ’152 and ’110 Patents. Neither patent uses the term “crossbar switch” in the specification or claims. And, claim construction of a means-plus-function claim term is limited to the corresponding structure disclosed *in the patent specification*. *See, e.g., IPCom GmbH & Co. v. HTC Corp.*,

861 F.3d 1362, 1371 (Fed. Cir. 2017). Inventor testimony regarding claim construction typically is irrelevant to any claim construction; and, it is particularly irrelevant to a means-plus-function claim construction when the testimony relates to matters outside the patent specification. *See, e.g., Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379 (Fed. Cir. 2000). Additionally, even the “memory interconnect fabric” itself is not directly related to the “means coupling” claim term. *See, e.g., IPR2018-01599*, Paper 37 at 48-53; 51 (yellow lines corresponding to the proposed claim construction structure for “means coupling” does not touch the “memory interconnect fabric” of Figure 1).

D. Microsoft’s Questions Regarding Classified National Security Applications of the SRC-6 are Irrelevant and Outside the Scope of Huppenthal’s Declaration.

The Huppenthal declaration provided high-level, general testimony regarding the customers who purchased SRC-6 computers and the features of interest to those customers. Decl. ¶¶80-87. His declaration did not touch upon the *applications* any customers ran on the SRC-6. Microsoft conducted a full cross-examination on this testimony, and the witness was permitted to answer all questions. Depo.Tr. 100:11-103:5, 104:5-106:22.

Microsoft wandered outside the scope of the declaration by asking questions regarding the *classified applications* that Department of Defense (“DoD”) ran on the SRC-6. Depo.Tr. 101:10-15, 16-18, 19, 102:3-103:13. Microsoft’s Motion does not

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