UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION and HP INC.,
Petitioners,

v.

SYNKLOUD TECHNOLOGIES, LLC,
Patent Owner.

Patent No. 10,015,254
Issued: July 3, 2018
Filed: December 21, 2015

Inventor: Sheng Tai Tsao

Title: SYSTEM AND METHOD FOR WIRELESS DEVICE ACCESS TO EXTERNAL STORAGE

Inter Partes Review No. IPR2020-01031

PETITIONERS' REPLY BRIEF

TABLE OF CONTENTS

I. INTRODUCTION

Microsoft's petition demonstrated it would have been obvious to modify McCown, which discloses the storage of a webpage of URLs in a browser, to include a browser cache for storing that web page. Patent Owner responds with a scattershot of repetitive arguments ignoring the actual analysis included in the petition. But Patent Owner's strawman arguments and mischaracterizations of the petition cannot save its claims.

Patent Owner also seeks to prove secondary considerations of non-obviousness, but has no evidence of the required nexus, or that the commercial products it cites actually practice any claim of the 254 Patent. These arguments should be rejected as well.

II. ARGUMENT

A. Patent Owner's Expert Testimony Is Not Credible

Patent Owner cites to the declaration of its expert Mr. Jawadi, but the cited testimony is in almost every case unexplained and unsupported by citation to evidence. *See, e.g.*, EX2003,¶¶34, 36, 42, 44, 50-51, 56, 63-64, 80-81, 164, 169, 173; EX2001, ¶¶88-89, 97, 107, 111-117, 119. Such *ipse dixit* expert testimony cannot support the fact finding of the Board, and should be rejected. *Ericsson Inc. v. Intellectual Ventures I LLC*, 890 F.3d 1336, 1346 (Fed. Cir. 2018); 37 C.F.R. §42.65(a).

Moreover, the expert applies a legally erroneous understanding of both the law of obviousness and of claim construction. He testifies, for example, that he understands the term "obvious" to refer "to subject matter that **would have occurred to a POSITA to which the '254 Patent is directed without inventive or creative thought."** EX2001,¶23.[1] That is not the standard for obviousness. *E.g.*, *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1740 (2007) ("[W]hen a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, **the combination is obvious**.").

Similarly, the expert testifies that his understanding of claim construction is that "one arrives at the appropriate 'construction' or definition of what is embraced by the claims of the '254 Patent and what is excluded by those claims by a reading of the '254 Patent and arriving at what, based on that reading, **the inventor of the claimed subject matter intended to protect as her or his invention.**" EX2001,¶24. That, too, is not the law. *Markman v Westview Instruments, Inc.*, 52 F.3d 967, 986 (Fed. Cir. 1995) ("Thus the focus in construing disputed terms in claim language is not the subjective intent of the parties to the patent contract when they used a particular term.")

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[1] In this brief, emphasis has been added unless otherwise indicated.

Expert testimony based on an erroneous understanding of the law is entitled to no weight. *InTouch Techs., Inc. v. VGO Commc'ns, Inc.*, 751 F.3d 1327, 1348 (Fed. Cir. 2014).

B. Patent Owner's Claim Construction Is Legally Erroneous

Patent Owner argues the claim phrase "*download a file from a second server across a network into the remote storage space through utilizing information for the file cached in the cache storage in the wireless device*" should be construed to "require[] information needed to download a file from a remote server to be (i) stored in a cache storage of a wireless device and (ii) utilized to download the file across a network into an assigned storage space for the user of the wireless device." POR, 10.

Patent Owner never explains why the interpretation of the "*utilizing information …*" portion of this claim language adopted in the Institution Decision is inappropriate. Indeed its proposal is similar to the one adopted in that Decision. For example, the Board's construction requires that it is "the download information that is stored in cache storage, not the file itself," Inst. Dec., 11, which is exactly what is required by part (i) of Patent Owner's proposal. Similarly, the Board's construction requires "using information stored in the cache storage of the wireless device to download a file from a remote server," Inst. Dec., 11, which is exactly what is required by part (ii) of Patent Owner's proposal.

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