

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner,

v.

DH INTERNATIONAL LTD.,

Patent Owner.

PTAB Case No. IPR2024-01322

Patent No. 9,022,294

PATENT OWNER'S MOTION TO EXCLUDE

37 C.F.R. §§ 42.62 & 42.64(c)

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I. INTRODUCTION

Patent Owner objects to Petitioner’s Petition, Reply, Expert Declaration, and Expert Reply Declaration because the Petitioner asserted improper claim construction; Petitioner’s Expert provided irrelevant statements, used an improper standard when providing opinions; and Petitioner’s Expert failed to establish in the record that he has any knowledge related to expertise in Bluetooth.

A. Petitioner’s Improper Claim Construction.

Patent Owner objected, under Fed. Rule Evid. 401 and 403, to the Petitioner putting forward an improper and irrelevant claim construction in the Petition. *See* Paper 12, pp.2-3. Patent Owner seeks exclusion of the improper and irrelevant claim construction from this proceeding. Petitioner asserts its claim construction is for use only if the claims are interpreted under 35 U.S.C. § 112, sixth paragraph, making the assertions irrelevant because they are not asserting if the claim must be interpreted under 35 U.S.C. § 112, sixth paragraph or not. The assertions are:

- “To the extent ‘data conveyance switching element’ is subject to construction under 35 U.S.C. § 112, sixth paragraph (pre-AIA) ...” Pet. 6;
- “To the extent ‘control device’ is subject to construction under 35 U.S.C. § 112, sixth paragraph (pre-AIA) ...” Pet. 7; and

- “To the extent ‘data exchange device’ is subject to construction under 35 U.S.C. § 112, sixth paragraph (pre-AIA) ...”; Pet. 7.

However, 35 U.S.C. § 282(b) requires “construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b). Petitioner has the burden of establishing that either the claim needs to be construed under 35 U.S.C. § 112, sixth paragraph (pre-AIA) or plain meaning. It is not the Board’s burden to decide if the claims elements are to be construed under 35 U.S.C. § 112, sixth paragraph (pre-AIA) or plain meaning. The Petitioner fails to meet its burden and only asserts generally “to the extent” that the claims should be interpreted under 35 U.S.C. § 112, sixth paragraph (pre-AIA), and makes no legal arguments as to why or what the extent is. The general assertions are not relevant.

For these reasons, Petitioner’s claim construction must be excluded and not relied upon by the Board.

B. Expert Declaration and Expert Reply Declaration contain irrelevant statements that are not relied upon in IPR2024-01322.

Patent Owner objected to the Petitioner’s Expert Declaration (Exhibit 1003) and Expert Reply Declaration (Exhibit 1014) of Stuart Lipoff under Fed. Rule Evid. 401. *See* Papers 12, p. 3; 22, p. 2-3. The Expert Declaration paragraphs 1-52, 58-

61, 63, 65, 69-71, 76, 79-80, 89, 113, 127, and 194 (*See* Paper 1003), are not cited in the Petition and thus have no relevance. Also, if these uncited, irrelevant paragraphs were included, they would be considered new matter if cited and relied upon after the Petition was filed. Similarly, Expert Reply Declaration paragraphs 1-26, 28-31, 36-40, 57-83, and 85-89 (*See* Paper 1014) are not cited in the Reply, or any other paper in this proceeding. Thus, these paragraphs would be considered new matter if incorporated into any future argument by Petitioner.

In conclusion, Expert Declaration Paragraphs 1-52, 58-61, 63, 65, 69-71, 76, 79-80, 89, 113, 127, and 194 (Paper 1003) and Expert Reply Declaration and 1-26, 28-31, 36-40, 57-83 and 85-89 (Paper 1014) must be excluded from IPR2024-01322 because of relevancy and if used by Petitioner, would raise new matter.

C. Mr. Lipoff's Opinions Are Improperly Based on His Knowledge and Professional Judgment

Patent Owner objected to Mr. Lipoff's Opinions in his Expert Declaration (Exh. 1003) and Expert Reply Declaration (Exh. 1014) under Fed. Rule Evid. 403. Exhibit 1003 is based upon Mr. Lipoff's knowledge and professional judgment rather than the standard of the person skilled in the art at the time of the invention. Mr. Lipoff states in paragraph 26 of his Declaration:

All of the opinions contained in this declaration are based on the documents I reviewed and my knowledge and professional judgment. My opinions have also been guided by my understanding

of how a POSITA would have understood the claims of the '294 Patent at the time of the earliest claimed priority date.

Exh. 1003, ¶26. In the Expert Reply Declaration, Mr. Lipoff also stated, “I incorporate my Opening Declaration by reference. Exh. 1014, 2.

Mr. Lipoff’s opinions are based on his knowledge and professional judgment, guided only by the understanding of a POSITA. It is well settled that expert testimony must be from the vantage point of an ordinary skilled artisan in a patent case. *See Kyocera Senco Ind. Tools, Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1376-77 (Fed. Cir. 2022) (“[T]o be qualified to offer expert testimony on issues from the vantage point of an ordinarily skilled artisan in a patent case, an expert must at a minimum possess ordinary skill in the art.”). An Expert’s opinions need to be based upon what a POSITA at the time of the invention knows at the time of the invention, not simply guided by the understanding of a POSITA as asserted by Mr. Lipoff in both the Expert Declaration (Exh. 1003) and Expert Reply Declaration (Exh. 1014).

All of Mr. Lipoff’s opinions are tainted as “based upon his personal knowledge and professional judgment” and not the knowledge of a POSITA at the time of the invention and thus, must be excluded.

D. Mr. Lipoff is not a Bluetooth Communication Expert

Patent Owner objected to Mr. Lipoff’s opinions regarding the Bluetooth specification in the Expert Reply Declaration (Exh. 1014) because Mr. Lipoff is not

an expert in Bluetooth communication. *See* Paper 22, pp.3-4. Mr. Lipoff has offered no evidence of having any knowledge of Bluetooth. Mr. Lipoff's CV does not even mention Bluetooth. Petitioner never responded to Patent Owner's objection (*See* Id.). Nothing in the record of IPR2024-01322 supports Mr. Lipoff having Bluetooth knowledge to support any statements or opinions asserted in the Reply.

Mr. Lipoff did not consider the Bluetooth specification in the Petition, and Petitioner did not submit it as an exhibit, even though it was incorporated into the *Mooney* reference (Exh. 1005) that is the basis of all the grounds at issue in IPR2024-01322.

Mr. Lipoff's Bluetooth comments and assertions in Exh. 1014 lacks relevance under Federal Rules of Evidence 401, 402, and 403 and for having unsupported opinion testimony lacking sufficient probative value under Federal Rules of Evidence 702 and 703. Petitioner's Reply also relies on *Mooney's* Quality Bluetooth Signal and Mr. Lipoff's Expert Reply Declaration. *See* Paper 19, pp. 7-26.

Therefore, the Expert Reply Declaration must be excluded. Further, all arguments in Petitioner's Reply that rely on Mr. Lipoff's Expert Reply Declaration must be excluded because Mr. Lipoff is not a Bluetooth Expert.

II. CONCLUSION

For the above reasons, PO requests that the Board exclude:

- 1) Petitioner's claim constructions;
- 2) The identified portions of Exhibits 1003 and 1014;
- 3) Mr. Lipoff's Expert Declaration (Exh. 1003) and Expert Reply Declarations (Exh. 1003) because these Declarations are not based on knowledge of a person skilled in the art at the time of the invention; and
- 4) The Expert Reply Declaration Exh. 1014 and Reply (Paper 19) or, in the alternative, the sections of the Expert Reply Brief and the Reply (Paper 19, pp. 7-26) relying upon these sections be excluded because Mr. Lipoff is not a Bluetooth expert.

Dated: November 17, 2025

Respectfully Submitted

By: /s/ Robert Hart/

Robert Hart (Reg. No. 35,185)
Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies Patent Owner DH International Ltd. served this **PATENT OWNER'S MOTION TO EXCLUDE** on the counsel of record for Petitioner Google LLC by filing this document through the P-TACTS, as well as delivering a copy via electronic mail to the following:

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