

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**GARMIN INTERNATIONAL, INC. ET AL.**  
**Petitioner**

**v.**

**CUOZZO SPEED TECHNOLOGIES LLC**  
**Patent Owner**

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Case: IPR2012-00001  
Patent No.: 6,778,074  
Filed: March 18, 2002  
Issued: August 17, 2004  
Inventors: Giuseppe A. Cuzzo  
Title: Speed Limit Indicator and Method for Displaying Speed and  
the Relevant Speed Limit  
Docket No.: CUO0001-RE

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**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE**

Garmin International, Inc., *et al.* (“Petitioner”) has relied upon deposition testimony from Professor James Morris (“Prof. Morris”), an expert witness retained by Cuozzo Speed Technologies LLC (“Patent Owner”). Pursuant to 37 C.F.R. § 42.64(c), Patent Owner moves to exclude certain portions of that testimony, because it was elicited by Petitioner during improper cross-examination.

Specifically, Prof. Morris submitted direct testimony in the form of a declaration (Ex. 2002). His direct testimony was focused on a single issue: “whether there is a reasonable basis to interpret ‘integrally attached’ to cover the case of a single electronic display that itself operates both as a speedometer and a colored display.” Ex. 2002 at ¶ 7.

At his deposition, Petitioner repeatedly questioned Prof. Morris about matters outside the scope of his direct testimony in violation of 37 C.F.R. § 42.53(d)(5)(ii) (“For cross-examination testimony, the scope of the examination is limited to the scope of the direct testimony”). Patent Owner timely objected to each improper question during the deposition in accordance § 41.155(a) and now moves to exclude the inadmissible testimony upon which Petitioner relies.

Patent Owner moves to exclude the following portions of Exhibit 1021 (cited by transcript page and line numbers):

**Ex. 1021, Transcript (“Tr.”) at 76:6-78:3.**

Petitioner asked four questions to Prof. Morris about what he believed was “covered” by the claim language “continuously update the delineation of which speed readings are in violation of the speed limit” -- a subject not addressed anywhere in Prof. Morris’s direct testimony. Counsel for Patent Owner objected to each question on the record at 76:12, 77:5, 77:21, and 78:1. Petitioner relies upon this cross-examination testimony in its Opposition to Patent Owner’s Motion to Amend (Paper 39) at pages 3-4 as its only alleged support that proposed substitute claim 23 enlarges the scope of the original claims.

This cross-examination testimony should be excluded, because it is outside the scope of Prof. Morris’s direct testimony. Rule § 42.53(d)(5)(ii) clearly states: “For cross-examination testimony, the scope of the examination is limited to the scope of the direct testimony.” Prof. Morris did not provide any opinion regarding the claim language “continuously update the delineation of which speed readings are in violation of the speed limit” in his direct testimony. In fact, Prof. Morris expressly stated the scope of his direct testimony: “I have been asked to provide my opinion regarding whether there is a reasonable basis to interpret ‘integrally attached’ to cover the case of a single electronic display that itself operates both as a speedometer and a colored display.” Ex. 2002 at ¶ 7. For this reason alone, the cross-examination testimony at 76:6-78:3, to which Patent Owner properly and timely objected, should be excluded.

At his deposition, Prof. Morris explained that he could spend more time considering the issues about which he was being unfairly cross-examined, and he testified that he did not analyze those issues in preparing his Declaration because he was focused on the “integrally attached” term:

16           **Q Professor Morris, do you feel like it**  
17           **would be helpful for you to have time to consider**  
18           **some of this new information that you've heard**  
19           **today and analyze Claim 10 further to come to a**  
20           **final opinion about what this second paragraph in**  
21           **Claim 10 means to you?**

22           MR. MUDD: Object to the form.

23           A You know, I could spend more time in it,  
24           certainly if I compare it to the Smith thing. See,  
25           basically this is what he's depending upon to show

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1           that he's novel compared to Smith; and it doesn't  
2           have much to do with, anything to do with the  
3           relationship between the current speed and the  
4           legal speeds. So I'm a little bit confused by  
5           this, yes, so I could spend more time.

6           **Q This wasn't a focus of your efforts in**  
7           **your analysis in preparing your Declaration?**

8           MR. MUDD: Object to the form.

9           A That's true. As I said, I was mostly  
10          just spending time dealing with the integrated --  
11          what integrated attachment meant, or the integral  
12          attachment.

Following his deposition, Prof. Morris considered the questions asked by Petitioner, which were beyond his direct testimony. Prof. Morris then provided clarification in his sworn errata. Petitioner never sought to cross-examine Prof. Morris about his errata yet now challenges the admissibility of it. The parties have notified the Board of these issues and have requested a teleconference to obtain guidance on whether to submit Petitioner's challenge by motion to exclude.

### **Conclusion**

The Board should exclude evidence secured through improper cross-examination, including Prof. Morris' answers to questions that were outside the scope of his direct testimony.

No fees are required for filing this motion; however, the Commissioner is authorized to charge any additional fees that may be required, or to credit any overpayment, to Kasha Law LLC, Deposit Account No. 50-4075.

Respectfully submitted,

/John R. Kasha/

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Date: July 12, 2013

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