

**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 REPLY TO PETITIONER'S OPPOSITION TO PATENT  
OWNER'S MOTION TO EXCLUDE EVIDENCE**

Cuozzo Speed Technologies LLC (“Cuozzo”) submits this reply in support of Patent Owner’s Motion to Exclude Evidence (Paper 48). Garmin’s response confirms that the testimony at issue concerned matters outside the scope of Prof. Morris’s direct testimony and should be excluded under 37 C.F.R. § 42.53(d)(5)(ii).

**I. Garmin Mischaracterizes Prof. Morris’s Direct Declaration Testimony.**

Garmin’s argument is based on the flawed premise that Prof. Morris “was retained to opine on” “the proper interpretation of claim 10.” Paper 54 at 7. Prof. Morris offered no opinion on the overall interpretation of claim 10 – a fact Garmin confirmed during the deposition (Ex. 1021 at 26:16-24):

16       **Q** So is it correct that the focus of your  
17       assignment was on the interpretation of the term  
18       **integrally attached in the claims of the '074**  
19       **patent?**  
20       A Yes.  
21       **Q** Are all the opinions that you've formed  
22       in this matter to date contained in your  
23       **Declaration?**  
24       A Yes.

Nor did Prof. Morris offer an opinion on the legal question of claim interpretation. Rather, he was “asked to provide [his] 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.” Morris Decl., Ex. 2002, at ¶ 7.

Garmin spent the first half of the deposition examining Prof. Morris on the reasons and bases for his opinion that one skilled in the art, having reviewed the

intrinsic record, would understand the “integrally attached” limitation to be met by the use of a single LCD for both the speedometer readout and colored display. But then Garmin changed topics altogether and began asking Prof. Morris questions directed to infringement, which was not the subject of his direct testimony.

## **II. The Testimony at Issue Concerns Infringement, *not* the Meaning of “Integrally Attached” or any other Claim Term to One Skilled in the Art.**

On its face, Morris’s disputed testimony is outside the scope of the opinions offered in his declaration. Garmin’s questions were directed to infringement, asking for his opinion on whether certain hypothetical devices would be “covered” by certain claim language: “do you read that as covering a system which . . .” (Ex. 1021 at 76:6-11); “changing the color of a numeral to red wouldn’t be covered by this claim language?” (*id.* at 77:3-4); “So an abrupt change to red wouldn’t be covered by that claim?” (*id.* at 77:19-20); and “So an abrupt change . . . isn’t what this claim language in Claim 10 is describing?” (*id.* at 77:23-4).

These questions exceed the scope of Dr. Morris’s direct testimony, which Garmin itself articulates as “opinions that the claim could encompass a single electronic display that itself served as the speedometer and colored display.” Paper 54 at 3-4. Prof. Morris did not address infringement in his declaration and was not prepared for questions about infringement. At one point, Prof. Morris replied to Garmin’s expansive cross-examination by stating, “I’m not sure what you mean by covered.” Ex. 1021 at 77:22. As further evidence that Garmin’s questions had

nothing to do with claim interpretation, Garmin relied on the answers only for its broadening argument and *not* for its claim construction arguments.

**III. Cuozzo Speed's Re-Direct Confirmed That Garmin's Questions Were Outside the Scope of Prof. Morris's Direct Testimony and That He was Unprepared to Offer Reliable Opinion Testimony in Response to Them.**

Garmin turns the Rules of Evidence on their head by suggesting Cuozzo's redirect examination of Prof. Morris somehow opened the door (retroactively) to Garmin's improper questions or otherwise waived Cuozzo's proper and timely objections. It is the scope of direct examination that defines the proper scope of cross-examination, *not* re-direct following cross. 37 C.F.R. § 42.53(d)(5)(ii) (setting a stricter standard than the discretionary standard in Fed. R. Evid. 611(b)). "The examination and cross-examination of a witness proceed as they would in a trial under the Federal Rules of Evidence." Office Patent Trial Practice Guide, Fed. Reg. Vol. 77, No. 157, Appendix D, Testimony Guidelines, at 48772. Contrary to Rule 611(b), which affords trial judges discretion ("Cross-examination should be limited to the subject matter of the direct examination"), § 42.53(d)(5)(ii) does not afford such discretion ("the scope of the examination *is limited* to the scope of the direct testimony") (emphasis added to highlight mandatory language).

On re-direct, Prof. Morris was asked about his qualifications and preparations (or lack thereof) to answer Garmin's expansive questions. His responses confirmed he was not prepared to offer the expert opinion testimony elicited:

- Q: Did you analyze all of the claims in the '074 Patent? A: No, no. (Ex. 1021 at 83:3-5).
- When asked whether he analyzed the portion of the file history relating to the “delineation” term, Prof. Morris testified, “No. At least in my recollection I didn’t.” (*id.* at 87:1-7).
- Acknowledging the limit of his undertaking, Prof. Morris testified, “I was mostly focused on the integration of the two pieces of information into one display.” (*id.* at 87:8-11).

Expert opinion testimony must be relevant to be admitted, and, here, Prof. Morris’s testimony on voir dire establishes he did not analyze the “delineation” term that was the subject of Garmin’s improper cross-examination. *See* Fed. R. Evid. 702. Prof. Morris’s outside-the-scope testimony about what is “covered” by the “delineation” claim term should be excluded.

#### **IV. Cuozzo’s Objections Were Timely, Complied with the Practice Guide, and were Perfected by the Motion to Exclude.**

Garmin seeks to exploit Cuozzo’s strict compliance with the Board’s rules and guidelines. Cuozzo’s counsel properly and timely objected to the improper cross-examination. The Practice Guide limits objections that may be made during cross-examination outside the presence of the Board. Office Patent Trial Practice Guide, Fed. Reg. Vol. 77, No. 157, Appendix D, Testimony Guidelines, at 48772 (“Counsel must not make objections or statements that suggest an answer to a witness.”). The rules state: “Objections should be limited to a single word or term,” and “Objection, form” is a proper objection. (Garmin made the same “form” objections.) Cuozzo perfected its objections by filing the motion to exclude. *Id.* at 48767. Cuozzo raised

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