UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ALARM.COM INC.
Petitioner

v.

VIVINT, INC.
Patent Owner

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Case IPR2016-00116
Patent 6,147,601

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PETITIONER'S RESPONSE TO PATENT OWNER'S MOTION FOR OBSERVATION ON CROSS EXAMINATION OF REPLY WITNESS ARTHUR ZATARAIN

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Alexandria, VA 22313-1450

Patent Owner Vivint submits 22 observations, none of which undermine Petitioner Alarm.com's record evidence or further develop any existing issue in this case. Thus, as set forth below, all of the observations should be disregarded.

Response to Observation 1: Vivint cites testimony suggesting that Mr. Zatarain did not "select[] the arguments" in his Reply Declaration and that attorney "wordsmithing" of Mr. Zatarain's declaration is "relevant to the credibility of Mr. Zatarain's opinions". Pat. Owner's Mot. at 1 ("Motion") (citing Ex. 2018, 7:2-25). This observation should be disregarded for at least two reasons. First, Mr. Zatarain testified unequivocally that his Declaration was "my content, my reply", that the attorneys identified topics addressed by Mr. Denning (Vivint's expert), and that the attorneys assisted him in formatting citations and other similar clerical work. *See id.* at 7:17-22, 8:1-8. Second, Vivint's claim about Alarm.com's attorneys "select[ing] the arguments" is also without merit, as the attorneys merely generated a list of the "arguments" or "topics" *raised by Patent Owner* in its Response. *See* Ex. 2018, 7:13-15. There is no reason to doubt the sincerity of Mr. Zatarain's opinions, and Vivint does not identify any specific opinion it claims is not credible for this reason.

Response to Observation 2: Vivint cites Mr. Zatarain's agreement that "a system that only obtains data from storage and does not write to storage" comports with the definitions of "access" cited in his Reply Declaration and therefore that

the user interface in Shetty could not be used to modify user profiles. Motion at 1-2. That conclusion is without merit. Mr. Zatarain's testimony does not contradict his opinions because he opines that a person of ordinary skill in the art ("POSA") would understand the word "access" to include *both* read-only and read-write systems. *See* Ex. 1130, ¶ 56; *see also* Ex. 2018, 13:23-14:4 ("access" applies to both reading and/or writing); 16:4-9 (same); 17:4-10 (same); 18:5-14 (same). In addition, the plain language definitions of access encompass both reading and writing data, and other disclosures in Shetty make clear to a POSA that users of the system can use the interface to configure the profiles (Ex. 1130, ¶¶ 44-50, 61-72).

Response to Observation 3: Vivint cites testimony of Mr. Zatarain stating that he paraphrased, rather than quoted, Mr. Denning with regard to Mr. Denning's testimony that the word "access" includes both reading and writing data. Regardless of whether Mr. Denning used the words "as well as", Mr. Denning testified that he agreed that both "retrieval" of data (reading) and "update" of data (writing) are "access operations". Ex. 1118, 39:13-19. Thus, there is no substantive difference in meaning, and Mr. Denning's testimony supports Mr. Zatarain's contentions concerning a POSA's understanding of the word "access". *See* Ex. 1130, ¶¶ 51-55.

Response to Observation 4: Vivint cites Mr. Zatarain's statement that the Shetty reference discloses three logical databases as somehow "undermin[ing]" his

supposed argument that "allowing [a] user to input [*sic*] into the [Shetty] fleet and

machine database" means that "Shetty [also] discloses a user inputting data into the

user profile database". Motion at 2-3 (citing Ex. 1130, ¶ 49). But Mr. Zatarain

never contended that the fleet and machine database and the user profile database

are the "same database"; instead he opined that adding data to the user profile

database is consistent with Shetty's express disclosures about the fleet and machine

database. Specifically, Mr. Zatarain explained that Shetty teaches a customizable

system to solve "the problem of having too much data to analyze" with the solution

being a "system [that] allows for the users to decide what events they want to be

notified about and . . . how the system should contact them". Ex. 1130, ¶ 47. In

that context, Mr. Zatarain explained that a system would be useless if new fleet and

machine data could be added to the system, but users could not be notified of

events concerning the newly-added machines. *Id.*, ¶¶ 49; 70 ("a PHOSITA would

understand that the user profile database would also need to be modified when

changes are made to the fleet and machine data, so that notifications could be

received based on any new machines . . ."). The observation should be ignored.

Response to Observation 5: Vivint cites testimony from Mr. Zatarain

agreeing that the word "also" in the sentence "the user interface also allows the

user to input information relating to the fleet or machine data" informs a POSA

that user interface 110 would allow access to fleet and machine database 104,

rather than also reflecting on Shetty's use of the word "access" in the preceding sentence of the specification. Vivint misstates Mr. Zatarain's testimony because it is incomplete. In fact, Mr. Zatarain testified at page 32, lines 5 through 25 of Exhibit 2018 that, "I think it's using the words as they would be commonly known. Access, input, reading, is all about working with the database, as is commonly known." Review of Mr. Zatarain's complete testimony demonstrates that he did not contradict his opinion, as reflected in paragraphs 69 and 70 of his Reply Declaration.

Response to Observation 6: Vivint cites testimony that purportedly "undermines" Mr. Zatarain's argument "that databases are read-write unless otherwise indicated". Motion at 4 (citing Ex. 1130, ¶ 53). First, Mr. Zatarain did not opine that "databases are read-write unless otherwise indicated". *Id.* Rather, he opined that, given the plain meaning of the word "access" and Shetty's unqualified use of that word, he would have expected Shetty to have made clear if the user's "access" was meant to be "read-only". Second, Mr. Zatarain cited many dictionary definitions of the word "access" to support his opinion that the plain meaning of "access" includes read-write capabilities. *Id.*; *see also* Ex. 1130, ¶ 58 (addressing "special case" of online phone directory). The cited testimony does not contradict Mr. Zatarain's declaration; the observation should be disregarded.

Response to Observation 7: Vivint cites Mr. Zatarain's testimony that there

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