

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioners

v.

INTELLECTUAL VENTURES II LLC
Patent Owner

Case IPR2016-01404
Patent 6,968,459

**PATENT OWNER'S MOTION FOR OBSERVATIONS ON CROSS-
EXAMINATION OF DR. PAUL FRANZON**

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U.S. Patent & Trademark Office
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Alexandria, VA 22313-1450

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EXHIBIT LIST

<i>Exhibit #</i>	<i>Description</i>
2001	Microsoft Dictionary
2002	Schneier, B., <i>Applied Cryptography</i> , 2d. Ed., Wiley, 1996
2003	Franzon Deposition Transcript (May 4, 2017)
2004	Declaration of David M. Goldschlag, Ph.D.
2005	Curriculum Vitae of Dr. Goldschlag
2006	Definition of “specific”, <i>Merriam Webster’s Collegiate Dictionary</i> , Eleventh Edition (2008)
2007	Conference Call Transcript (May 4, 2017)
2008	Second Franzon Deposition Transcript (September 13, 2017)

Patent Owner hereby submits observations on Patent Owner's September 13, 2017 cross-examination of Petitioners' expert, Dr. Paul Franzon, regarding his August 30, 2017 Supplemental Declaration (Ex. 1012) in support of Petitioners' Reply dated August 30, 2017 (Paper 23). Exhibit 2008 is a transcript of that deposition and is used as the basis for the observations below.

Observation No. 1

In Exhibit 2008, page 51, line 9– 11, Dr. Franzon was asked “in Column 6, Line 7 through 11, when Bensimon uses the term password string, which type of class of password is Bensimon referring to?” Dr. Franzon response was that “is referring to **either the write protection password or read-write protection password**” Ex. 2008, 51:13-15. This relevant because it directly contradicts Dr. Franzon's “Supplemental” Declaration at ¶ 24, where he states “my understanding is that Bensimon does not disclose the type of “password string” the Password-Disable command sends to the storage device using the disable command.” Dr. Franzon's repeated contradictions are highly relevant to his credibility and the weight that the Board should give to Dr. Franzon's opinions.s.

Observation No. 2

In Exhibit 2008, page 57, lines 14-58, Dr. Franzon agrees that Bensimon does not explicitly disclose what happens when an error condition is set, stating “Bensimon doesn't give further detail on what happens to the error conditions set.” This

testimony is relevant to Petitioner’s anticipation ground because it contradicts Dr. Franzon opinion at ¶ 30 of his “Supplemental” declaration that Bensimon teaches that “write commands” are disabled when an “error condition” is set. When pressed at deposition, faced with the lack of explicit teaching in Bensimon that “write commands” must always be disabled after an “error condition” is set, Dr. Franzon repeatedly refused to answer the question. *See* Exhibit 2008, p. 57:14-71:4. Dr. Franzon’s shifting and inconsistent positions and refusal to answer questions related to those opinions is relevant to weight that the Board should assign to his opinions.

Observation No. 3

In Exhibit 2008, page 19, line 19– page 25, line 25, Dr. Franzon was asked repeatedly “Do you know whether or not your opinions changed between your supplemental report and your original report?,” and Dr. Franzon repeatedly refused to answer this question other than to say that “My supplemental report builds on top of the opinions in the original report.” This testimony is relevant to Dr. Franzon’s credibility as an expert witness. Dr. Franzon’s refusal to answer this question indicates that he was not properly prepared to discuss his opinions during the deposition, thereby depriving Patent Owner a fair opportunity to cross-examine Dr. Franzon, and thus the Board should assign little weight to Dr. Franzon’s opinions in his Supplemental Declaration.

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