

IPR2018-01498  
Patent 9,380,282

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMAZON.COM, INC.,  
Petitioner,

v.

CUSTOMPLAY, LLC,  
Patent Owner.

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Case IPR2018-01497  
Patent 9,124,950

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**PATENT OWNER'S REPLY IN SUPPORT OF THE MOTION  
TO EXCLUDE**

Pursuant to 37 C.F.R. § 42.64, and in accordance with Due Date 6 of the Scheduling Order (Paper No. 14), CustomPlay, LLC. (“Patent Owner” or “PO”) respectfully submits this Reply in support of its Motion to Exclude (Paper No. 28) (the “Motion”) and in response to Petitioner’s Opposition (Paper No. 29). Patent Owner’s Motion to Exclude should be granted.

Petitioner incorrectly argues that the objected-to testimony is “highly probative” and that there is no unfair prejudice. But Patent Owner clearly stated that “the improper form of the questions asked renders the resulting testimony meaningless [and] prone to misunderstanding.” (Paper 28, 1.) Further, whether Dr. Reader’s testimony is probative is not a substitute (nor a cure) for the flaws in Petitioner’s line of questioning that gave rise to Patent Owner’s counsel’s objections during cross-examination.

Patent Owner further pointed out that portions of Dr. Reader’s testimony were rendered irrelevant by Petitioner’s improper questioning. And this is especially true with respect to Petitioner’s vague and ambiguous questions that gave rise to Patent Owner’s objections where Petitioner relies on the improperly elicited testimony in a confusing and misleading manner. For example, Petitioner previously cited to Dr. Reader’s testimony as an alleged admission that “receiving a request for additional information, retrieving that information and displaying it *was known*.” (Paper 22 (“Petitioner’s Reply”) at 12, citing Ex. 1101, 55:13-59:8 (emphasis added).) Now,

in support of its arguments for admissibility of the objected to portion (Ex. 1101, 56:13-22), Petitioner explains that “[t]his testimony is probative of obviousness because it shows that the additional limitations recited in claims 9 and 16 were *well-known in the art*.” (Paper 29 at 4 (emphasis added).) However, in the Petition, Petitioner did not argue that the corresponding claim limitations were “well-known in the art.” Instead, the argument in the Petition was that “*McIntire* further *discloses* requesting, retrieving and displaying additional information.” (Paper 1 at 33 (emphasis on “McIntire” added).) Thus, even if the question were clear (it is not) with respect to what was “well-known in the art”, it certainly is not probative of the very different theory Petitioner advanced in the Petition based on McIntire.

Further Petitioner also justifies admissibility for the vague and ambiguous terms, “through that information” on the basis that Reader testified that additional information might be *accessed* through a hyperlink and because he did not ask for clarification. (Paper 29 at 3-4.) However, Petitioner fails to connect how a prior answer to a question about *accessing* information by use of a link corresponds to the later question that asked about what a user could request and receive *through* information that is not a video. Accordingly, Petitioner’s attempts to show that the objected-to questions were not vague and ambiguous fall short.

For the foregoing reasons, Patent Owner’s Motion to exclude the challenged portions of Exhibit 1101 should be granted.

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Date: November 25, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that, on November 25, 2019, I caused a true and correct copy of the foregoing:

PATENT OWNER'S REPLY IN SUPPORT OF THE MOTION TO EXCLUDE to be served via electronic mail on the following attorneys of record, pursuant to Petitioner's Updated Mandatory Notice:

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