UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION and HP INC.,
Petitioners,

v.

SYNKLOUD TECHNOLOGIES, LLC,
Patent Owner.

Patent No. 9,098,526
Issued: August 4, 2015
Filed: January 8, 2014

Inventor: Sheng Tai Tsao

Title: SYSTEM AND METHOD FOR WIRELESS DEVICE ACCESS TO EXTERNAL STORAGE

Inter Partes Review No. IPR2020-00316

PETITIONERS' REPLY BRIEF

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I. INTRODUCTION

Patent Owner's main argument in response to the Petition is that it would not have been obvious for the browser of McCown to store a web page of URLs in a browser cache specifically intended to store web pages. That just ignores what a browser cache is for. Indeed, the Response goes to great length to ignore the Petition's argument that some users would seek to access the web page of URLs more than once, so a Skilled Artisan would have been motivated to cache it. By ignoring the argument, Patent Owner concedes it.

Patent Owner's secondary argument is that, even though McCown discloses a user logging on to a storage space account and then storing files into the account, and Dutta discloses a storage server allocating "a **certain amount** of online storage space" after the user has registered, in the combination of those references it would not have been obvious to assign the user "*a storage space of a predefined capacity*." That argument ignores what these references disclose. Both arguments should be rejected.

Patent Owner also seeks to prove secondary considerations of non-obviousness, but has no evidence of the required nexus, or that the commercial products it cites actually practice any claim of the 526 Patent. These arguments should be rejected as well.

II. ARGUMENT

A. Patent Owner's Expert Testimony Is Not Credible

Patent Owner cites to the declaration of its expert Mr. Jawadi, but the cited testimony is in almost every case unexplained and unsupported by citation to evidence. *See, e.g.*, EX2014,¶¶58, 62, 64, 68, 73, 76, 81, 84, 86-89, 100-103, 105-115, 120-121. Such *ipse dixit* expert testimony cannot support the fact finding of the Board, *Ericsson Inc. v. Intellectual Ventures I LLC*, 890 F.3d 1336, 1346 (Fed. Cir. 2018), and should be rejected on that basis alone.

Moreover, the expert applies a legally erroneous understanding of both the law of obviousness and of claim construction. He testifies, for example, that he understands the term "obvious" to refer "to subject matter that **would have occurred to a POSITA to which the '526 Patent is directed without inventive or creative thought."** EX2014,¶26.[1] That, of course, is not the standard for obviousness. *E.g.*, *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740 (2007) ("[W]hen a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, **the combination is obvious**.") (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976).

[1] In this brief, emphasis has been added unless otherwise indicated.

Similarly, the expert testifies that his understanding of claim construction is that "one arrives at the appropriate 'construction' or definition of what is embraced by the claims of the '526 Patent and what is excluded by those claims by a reading of the '526 Patent and arriving at what, based on that reading, **the inventor of the claimed subject matter intended to protect as her or his invention.**" EX2014,¶27. That, too, is not the law. *Markman v Westview Instruments, Inc.*, 52 F.3d 967, 986 (Fed. Cir. 1995) ("Thus the focus in construing disputed terms in claim language is not the subjective intent of the parties to the patent contract when they used a particular term.")

Expert testimony based on an erroneous understanding of the law is entitled to no weight. *InTouch Techs., Inc. v. VGO Commc'ns, Inc.*, 751 F.3d 1327, 1348 (Fed. Cir. 2014). The testimony of Patent Owner's expert should be given none.

B. Patent Owner's Claim Constructions Are Legally Erroneous

1. Download a file from a remote server …

Patent Owner argues the claim phrase "*download a file from a remote server across a network into the assigned storage space through utilizing download information for the file stored in said cache storage*" should be construed to "require[] information needed to download a file from a remote server to be (i) stored in a cache storage of a wireless device and (ii) utilized to download the file

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