

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Facebook, Inc.
Petitioner

v.

Rembrandt Social Media, L.P.
Patent Owner

IPR2014-00415
Patent 6,415,316

**PATENT OWNER REMBRANDT SOCIAL MEDIA, L.P.'S
OBSERVATIONS ON TESTIMONY OF MR. ED TITTEL**

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EXHIBITS

| Exhibit | Description |
|----------------|---|
| REMBRANDT 2001 | Summons in a Civil Action, <i>Rembrandt Social Media, LP v. Facebook, Inc. and AddThis, Inc.</i> , No. 1:13-cv-158 TSE/TRJ (E. D. Virginia) |
| REMBRANDT 2002 | Solomon, M.B., USPS formally launches new “Priority Mail” product with next-day delivery window, DCVelocity, August 14, 2013 |
| REMBRANDT 2003 | USPS PCC Insider, July 2013 |
| REMBRANDT 2004 | USPS Priority Mail Express |
| REMBRANDT 2005 | USPS Location finder: Menlo Park, CA |
| REMBRANDT 2006 | FedEx Tracking for No. 797846335373 (February 6, 2014 - February 10, 2014) |
| REMBRANDT 2007 | FedEx Service Guide September 2013 |
| REMBRANDT 2008 | FedEx Transit Times from Palo Alto, CA to Atlanta, GA |
| REMBRANDT 2009 | FedEx Value-Added Options, Saturday Delivery |
| REMBRANDT 2010 | FedEx Rates and Transit Times |
| REMBRANDT 2011 | Declaration of Mark T. Jones, Ph.D. |
| REMBRANDT 2012 | Curriculum Vitae of Mark T. Jones, Ph.D |
| REMBRANDT 2013 | Transcript of October 3, 2014 Deposition of Edward R. Tittel |
| REMBRANDT 2014 | Transcript of March 4, 2015 Deposition of Edward R. Tittel |

Patent Owner hereby files the following observations on the testimony given by Petitioner's Declarant Mr. Edward R. Tittel at a deposition held on March 4, 2015.

I. OBSERVATIONS

A. Privacy Level Information

1. Mr. Tittel's Prior Art Opinions Depend Upon His Incorrect Understanding of "Privacy Level Information"

At 100:23-101:5 Mr. Tittel testified as follows:

Q. And is it -- is it fair to say that your opinions on the prior art [] addressed in this IPR depend on your understanding of the term "privacy level information"?

A. If taken in context with the use of files and objects in a distributed environment, which would also involve some notion of access controls, then, yes.

This testimony is relevant for the following reason. If the Board agrees with the Patent Owner's construction of "privacy level information," it may properly ignore the prior art opinions of Mr. Tittel because they depend upon his incorrect understanding of that term.

2. Mr. Tittel Agrees that the '316 Patent Teaches a Privacy Level of Owner, which Has Only a Single Member

At 102:21-103:15, Mr. Tittel testified as follows:

Q. . . . My question is do you agree that the '316

specification teaches the privacy level of the owner?

A. Yes. In the summary of the invention, there is a section that refers to owner in the paragraph from lines 40 to 46. And then there are other references elsewhere in the specification as well.

Q. Okay. Do you agree that the owner is one person?

A. As presented in the patent, the concept of owner is associated with some notion of personhood, yes. Although in a digital system, the owner is actually an account, and so that anyone who possessed the credentials to access that account could access it. So typically it would be one person, but if the -- if the credentials were shared, then it could be more than one person. But it definitely represents a single account of a specific kind.

This testimony is relevant because it shows agreement among the experts that the '316 patent discloses a universe of one single user associated with the disclosed privacy level of "owner," and thus that the Patent Owner's proposed construction of "privacy level information" is not overly narrow.

3. Recanting a Statement in his Most Recent Declaration, Petitioner's Expert Now Agrees that Figure 4(d) and Its Description Are Relevant to a Proper Understanding of Privacy Level Information

In his most recent declaration, with respect to Figure 4(d) of the '316 patent and its description in the specification, Mr. Tittel stated “[o]ne of ordinary skill in the art would have found these disclosures irrelevant to the meaning of ‘privacy level information’ in the claims.” (Ex. 1015 ¶ 7.) But at his recent deposition, Mr. Tittel recanted this statement, admitting that these disclosures are relevant to those of skill in interpreting “privacy level information”:

Q. And is it your opinion that a person of skill in the art, to determine the meaning of "privacy level information" would not consider this Section 2,^[1] [“]privacy level of a diary page[”] subsection?

A. I'm sorry. I didn't hear a question in there. Would you mind rephrasing?

Q. Is it your opinion that a person of skill in the art, in considering the meaning of "privacy level

¹ As the '316 patent makes clear, and as Mr. Tittel agreed (107:6-17), the specification is divided into various sections with headings. Section C is “Navigation by a user Within a Diary” ('316 patent 9:17) and Section 2 within Section C is “Privacy Level of a Diary Page” ('316 patent 10:28.)

information" in the claims, would not consider Section 2? Is that your opinion?

A. No, that is not my opinion. My opinion is that what appears in this discussion explains how the interface works for the various elements that appear in Figure 4D, but it does not describe the data or the attributes that are associated with those things to either help identify or communicate them. All we know is that there are different levels, and that those levels have names.

Q. That's relevant to understanding the meaning of the terms "privacy level information," though, isn't it?

THE WITNESS: It describes various categories that correspond to privacy levels as described in the second paragraph underneath the Number 2 heading in lines 36 to 54, but mostly described in 36 through 41.

BY MR. GOETZ: Q. Right. And that description is relevant to understanding the meaning of the terms "privacy level information" in the claims, right?

A. It does show an example of what privacy level information might consist of.

Q. So it sounds like you agree. Do you agree?

A. Yes.

(107:18-109:6, objection omitted.) In addition to establishing how those of skill would actually consider the '316 specification when understanding “privacy level information” in the claims, this testimony shows that Mr. Tittel’s previous deposition testimony concerning “gradation” is also relevant for the reasons Patent Owner explained in its response, and that Petitioner’s attempt to explain that testimony away on page three of its reply brief should be ignored.

B. Salas

1. Mr. Tittel Agrees that Salas Fails to Explicitly Disclose Using the Client’s File System to Enforce Restrictions

At 110:21-112:12, Mr. Tittel testified as follows:

Q. Do you agree that there's no explicit disclosure in Salas that the file system on a client is enforcing those restrictions?

A. The language of Salas in the quoted paragraph in 21 says that the only way the user can access the file is if they have the appropriate access rights.

And once that file arrives at the client, the local copy has those rights or access controls associated with it and, thus, will be enforced at the client. It seems to be a clear statement of how the envisioned system will behave.

Q. Do you agree with me that that language is not an explicit disclosure that the file system on the client is enforcing those restrictions?

A. The word "file system" does not occur in the Salas text that we're discussing.

Q. And so it sounds like you agree with me; is that correct?

A. There's no explicit mention of file system in that language.

Q. And as a result, you agree with me, correct?

MR. WEINSTEIN [Facebook Counsel]: Court Reporter, could you read back the two questions ago, the question two questions ago.

(Record read by the reporter as follows:

QUESTION: Do you agree with me that that language is not an explicit disclosure that the file system on the client is enforcing those restrictions?)

MR. WEINSTEIN: Thank you.

THE WITNESS: Yes. I agree, but I also observe in paragraph 23 of my declaration, that it is well known to persons of ordinary skill in the art that the user's local computer must enforce can view and can edit privileges for a downloaded file, and that this

ultimately comes down to the file system and the operating system inside which the file system operates.

This testimony is relevant because it shows that Salas does not explicitly disclose using the file system on the user's computer to enforce any restrictions and that Mr. Tittel is reading into the Salas reference a "file system" disclosure that is not actually there.

2. Mr. Tittel's "File System Enforcement" Position Contradicts Plain Salas Disclosures

At 112:14-18 Mr. Tittel confirmed that it is his opinion that "in order for the Salas system to work as intended and disclosed, the file system must enforce the restrictions[.]" This testimony is relevant because it shows Mr. Tittel's fundamental misunderstanding of the Salas patent, which plainly discloses in column 13 that edit restrictions are checked—and thus enforced—at the server, as Mr. Tittel previously agreed. (*See* Patent Owner's Response at 31-34.) With this agreed server-side enforcement, there is simply no need to rely on "file system" enforcement and the Salas system would work just fine without it.

C. Parker – Mr. Tittel Agrees that Parker Is Not Directed to an HTML Web Page System

At 115:2-22, Mr. Tittel stated that Parker "does not teach web page assembly[.]" that "HTML and related markup is not mentioned in the Parker patent[.]" and that Parker is directed to a "file privilege administration

apparatus[.]” This testimony is relevant because it shows the hindsight nature of Mr. Tittel’s obviousness attack on the ’316 claims and because it contradicts the following Facebook suggestions that Parker is analogous to Salas:

- “Parker describes a network-based file access system similar to Salas” (Petitioner’s Reply at 6.)
- “Parker . . . Assembles the Page ‘In Accordance With’ that Information” (Petitioner’s Reply at 11.)
- “The Server in Parker . . . Assembles the Page for the User ‘in Accordance with’ that Information” (Ex. 1015, Tittel Decl. at 15.)

II. CONCLUSION

The Patent Owner respectfully submits that this testimony supports its request that the Board reject the Petitioner’s arguments and confirm the patentability of the ’316 claims at issue in this IPR.

Respectfully submitted,

Date: March 6, 2015

/John S. Goetz/

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on March 6, 2015, a complete and entire copy of this PATENT OWNER REMBRANDT SOCIAL MEDIA, L.P.'S OBSERVATIONS ON TESTIMONY OF MR. ED TITTEL and exhibit was provided via email to the Petitioner by serving the correspondence email address of record as follows:

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