UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Facebook, Inc.
Petitioner

v.

Rembrandt Social Media, L.P.
Patent Owner

Case IPR2014-00415
U.S. Patent No. 6,415,316

PETITIONER'S RESPONSE TO PATENT OWNER'S OBSERVATIONS ON TESTIMONY OF MR. ED TITTEL

Pursuant to the Board's July 7, 2014 Scheduling Order (Paper 10), Petitioner Facebook, Inc. ("Petitioner") responds as follows to Rembrandt Social Media L.P.'s ("Patent Owner") Observations on Testimony of Mr. Ed Tittel (Paper 25).

I. RESPONSES TO PATENT OWNER'S "OBSERVATIONS"

The patent owner's motion for observation improperly attempts to raise substantive arguments about the merits of the underlying petition. As demonstrated below, the patent owner's proposed observations do not relate Mr. Tittel's testimony to any precisely identified argument but instead improperly attempt to raise arguments and address substantive issues. *See* Scheduling Order (Paper 10), at 4-5; *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012) ("An observation (or response) is not an opportunity to raise new issues, re-argue issues, or pursue objections."). For the convenience of the Board, the Petitioner will adopt the patent owner's headings and numbering.

A. "Privacy Level Information"

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

According to the patent owner, if the Board agrees with its 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."

(Observations, at 1.) To the extent the Board chooses to consider this improper argument, it should be rejected. It does not logically follow from the testimony of Mr. Tittel cited by the patent owner that any of his opinions would be affected by a different construction of "privacy level information." The patent owner did not ask Mr. Tittel precisely how his opinions "depend" on the construction of "privacy level information" and did not ask him how (or even if) his opinions would change under the patent owner's proposed narrower construction.

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

It is not clear how the cited testimony relates to any issue in this IPR, and no explanation is provided by the patent owner. To the extent this argument is intended to suggest that Mr. Tittel agreed to some aspect of the patent owner's "privacy level information" construction, the testimony immediately following the excerpt quoted by the patent owner shows otherwise:

Q. So we can agree that the universe of users at that owner privacy level in the '316 patent is one user, right?

A. I beg your pardon? Would you repeat the question, please?

Q. Yes. I'll just ask the court reporter to read it back. It might be clearer.

(Reporter interruption.)

MR. GOETZ:

I see that it's garbled. Excuse me. I'm sorry. I see that the transcript is garbled, so I'm going to withdraw the question and ask it again.

Q. In light of that, can we agree that the universe of users at the owner privacy level in the '316 patent is one user?

A. I see no terminology in the '316 patent anywhere that refers to a universe of users. In the closest thing that I know of in the patent that deals with privacy levels, which would be Figure 4D, I see that there are different privacy levels presented, but I don't see any notion of a universe either in explicit terminology or in -- by implication from the language in the patent.

(Second Tittel Depo., Ex. 2014, at 103:16-104:14.)

3. Response to: "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"

The patent owner's argument and gloss about Mr. Tittel's testimony is improper in a motion for observations, for the reasons previously mentioned. The patent owner has also omitted other testimony from Mr. Tittel at the deposition that provides further context on this topic:

Q. And -- and this is -- this point -- you make this point in support of -- of your position that 4D, Figure 4D in its description in the specification are not -- not relevant to the meaning of "privacy level information" in your opinion; is that right?

A. No, that's not what it says, sir.

And -- and that's not what my opinion is either. All I'm saying is that the privacy level interface diagram that appears as Figure 4D in the patent is not informative about the actual type or kind of privacy level information that has to be transmitted to the user system. That's – that's a different thing.

This diagram shows us what levels there are, but it doesn't actually show us any of the attributes associated with any one of those levels, and, you know, how they're represented, stored and transmitted, so on and so forth.

(Ex. 2014, at 105:3-21 (underlining added).)

B. Salas

1. Response to: "Mr. Tittel Agrees that Salas Fails to Explicitly Disclose Using the Client's File System to Enforce Restrictions"

Mr. Tittel's testimony speaks for itself, and the patent owner's improper argument and gloss on the cited testimony should be disregarded.

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

This observation consists almost entirely of attorney argument that mischaracterizes Mr. Tittel's prior testimony. The patent owner claims that Mr. Tittel "agreed" on a particular point in his previous deposition, but the questions at issue in his previous deposition related to the access rights for "the page to which the user desires to upload the file," not the file itself. The actual prior testimony of Mr. Tittel, cited by the patent owner, was the following:

> Q. And then the next sentence, in the next paragraph, "The user's access rights are checked to ensure that the user possesses, create, or modification rights for the page to which the user desires to upload the file, step 706. And the file to be uploaded is stored to local mass storage, step 708."
>
> Do you see that?

A. Yes, sir.

(Patent Owner's Response at 32 (quoting Ex. 2013, 59:11-19) (underlining added); *see also id.* at 31-34.) Thus, contrary to the assertions in this observation, the patent owner did not elicit any contradictory testimony from Mr. Tittel.

C. Response to: "Parker – Mr. Tittel Agrees that Parker is Not Directed to an HTML Web Page System"

Mr. Tittel's testimony speaks for itself, and the patent owner's unwarranted inferences and arguments from that testimony are not the proper subject of a motion for observation on cross-examination.

Dated: March 16, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Sections 42.6(e), that a complete copy of the attached **PETITIONER'S RESPONSE TO PATENT OWNER'S OBSERVATIONS ON TESTIMONY OF MR. ED TITTEL** is being served via electronic mail on the 16th day of March, 2015, the same day as the filing of the above-identified document in the United States Patent and Trademark Office/Patent Trial and Appeal Board, upon counsel of record for the Patent Owner as follows:

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