

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCO Brands Corporation and
ACCO Brands USA LLC,
Petitioner,

v.

Think Products, Inc.,
Patent Owner.

Case IPR2015-01167
Patent 8,717,758

**PETITIONER'S RESPONSE TO PATENT OWNER'S MOTION FOR
OBSERVATIONS ON CROSS-EXAMINATION OF RYAN WHITE**

Petitioner ACCO Brands Corporation and ACCO Brands USA LLC

(“ACCO”) hereby responds to Patent Owner Think Products’ Motion for Observations on Cross-Examination of Petitioners’ Expert Witness, Ryan White.¹

I. RESPONSE TO: Observations Concerning Claim Construction and Whether Petitioners’ Expert Witness Is Qualified to Act as an Expert and Whether Petitioners’ Expert Authored His Declaration and Supplemental Declaration (Exhibits 1021, 1024)

a. In Observation I(a), Patent Owner states that the cited testimony “is relevant for establishing that Mr. White does not understand how to construe claims.” *See* Motion for Observations (Paper 27) at 2 (citing Ex. 1507, White Dep. Tr. at 31:15–16, 36:16–18).

The response is that during the deposition, although Mr. White testified that he did not understand the word “construe,” and that he did not construe the claims, Mr. White also testified that he “interpreted the claim language,” and that he made an assessment of the claim terms. Ex. 1507 at 42:5–7, 42:23–43:10. On redirect examination, Mr. White testified that his cross-examination testimony that he had not *construed* claim terms “wasn’t correct,” and that he had been confused by the use of the term “construe” rather than “interpret.” Ex. 1507 at 172:18–175:21. Mr. White may also have been somewhat confused during the cross-examination because a substantial portion of the questioning focused on his initial declaration,

¹ Identical responses are being filed in IPR2015-01167 and IPR2015-001168.

Ex. 1021—outside the proper scope of the cross-examination to which Patent Owner was entitled—instead of the supplemental declaration, Ex. 1024.

b. In Observation I(b), Patent Owner states that Ex. 1507, White Dep. Tr. at 35:19–21 “is relevant for establishing that Mr. White does not understand what a claim limitation is.”

The response is: See response to Observation I(a).

c. In Observation I(c), Patent Owner states that Ex. 1507, White Dep. Tr. at 36:25–38:14 “is relevant for establishing that Mr. White did not prepare his own declarations.”

The response is that, in response to several questions, Mr. White consistently testified that the declaration testimony was prepared in “working sessions” with counsel in which counsel assisted in putting his opinions into writing. Ex. 1507 at 36:8–15; 37:10–11, 37:17–38:14, 83:19–84:2, 119:3–7.

d. In Observation I(d), Patent Owner states that Ex. 1507, White Dep. Tr. at 42:15–44:23, 56:23–57:1, 58:8–13, 190:11–191:9 “is relevant for establishing that Mr. White did not consider or otherwise identify the differences between claims 1 and 16 of the ‘758 patent; the witness did not construe claim 16, making an erroneous assumption that claims 1 and 16 have the same scope, without any investigation or construction of independent method claim 16.”

The response is that the cited testimony is not relevant because it does not relate to any arguments raised by the Patent Owner in its Response. In addition, Mr. White testified in his declaration that he only construed some of the claim terms of the ‘758 and ‘144 patents, and that the “remaining terms of the claims should be construed according to their ordinary meaning to POSA and do not require any further discussion.” Ex. 1021, White Decl. ¶ 43. Likewise, Mr. White testified during his redirect examination that it did not “seem necessary” to construe all of the claim terms, when the terms were viewed “as a POSA.” Ex. 1507 at 175:17–21. Mr. White also testified that in his opinion claims 1 and 16 have the same scope. Ex. 1507 at 181:25–182:9.

e. In Observation I(e), Patent Owner states that Ex. 1507, White Dep. Tr. at 67:10–21, 121:14–123:23 “is relevant for establishing that Mr. White did not construe the term ‘captive security rod.’”

The response is that Mr. White testified in his supplemental declaration that in his “earlier declaration (Ex. 1021) [he] did not provide a construction of this term [captive security rod], relying on its ordinary meaning in the context of the ‘758 and ‘144 patents,” and that he “agree[s] with the Board’s construction of captive security rod,” which is “consistent with [his] understanding of the ordinary meaning of this term as applied in [his] earlier declaration.” Ex. 1024, White Suppl. Decl. ¶ 8.

f. In Observation I(f), Patent Owner states that E. 1507, White Dep. Tr. at 82:21–23 “is relevant for establishing that Mr. White did not construe the term ‘locking device.’”

The response is that the cited testimony is not relevant because it does not relate to any arguments raised by the Patent Owner in its Response. In addition, Mr. White testified in his declaration that he only construed some of the claim terms of the ‘758 and ‘144 patents, and that the “remaining terms of the claims should be construed according to their ordinary meaning to POSA and do not require any further discussion.” Ex. 1021, White Decl. ¶ 43. Likewise, Mr. White testified during his redirect examination that it did not “seem necessary” to construe all of the claim terms, when the terms were viewed “as a POSA.” Ex. 1507 at 175:17–21.

g. In Observation I(g), Patent Owner states that Ex. 1507, White Dep. Tr. at 82:24–83:23, 120:9–121:13 “is relevant for establishing that Mr. White did not did author his written expert testimony.”

The response is: See response to Observation I(c).

h. In Observation I(h), Patent Owner states that Ex. 1507, White Dep. Tr. at 121:14–123:23 “is relevant for establishing that the alleged limitation ‘must be stored’ partially in said at least one housing during non-use and between deployments is not recited in the claims.”

The response is that during Mr. White’s redirect examination he testified that all challenged claims “require the captive security rod to be captive in the housing partially in the housing and partially out of the housing, before and during locking use,” although some claims do not have the “exact language” that he was asked about. Ex. 1507 at 178:5–179:24. Mr. White identified language that requires the captive security rod to be captive in the housing partially in the housing and partially out of the housing, before and during locking use, in each of the independent claims: claims 1, 14, and 20 of the ‘144 patent, and claims 1 and 16 of the ‘758 patent. Ex. 1507 at 179:25–182:19.

II. RESPONSE TO: Observations Concerning Claim Terms

a. In Observation II(a), Patent Owner states that Ex. 1507, White Dep. Tr. at 75:13–77:22, 85:13–17 “is relevant for establishing that element 286 . . . activates the locking mechanism 110” upon insertion of a locking end of the element 286.

The response is that Mr. White testified that a key may be required to activate the locking mechanism 110 after element 286 is inserted into the locking mechanism. *See* Ex. 1507 at 77:4–5, 77:25–78:2 (“That would be an assumption. I don’t know if you would need a key, but you said there is no key.”).

b. In Observation II(b), Patent Owner states that Ex. 1507, White Dep. Tr. at 97:2–17 “is relevant for establishing that movement of element 286, as

depicted in Fig. 28D of the ‘758 patent (and the ‘144 patent), is limited, i.e., anchored once passed through the housing 516 and inserted to activate and lock to locking device 110.”

The response is that Mr. White testified that in Fig. 28D element 286 is limited in its movement only “[r]adially,” and that element 286 is “not anchored.” Ex. 1507 at 97:16–98:3.

c. In Observation II(c), Patent Owner states that Ex. 1507, White Dep. Tr. at 103:11–104:17 “is relevant for establishing that element 286 depicted in Fig. 28D of the ‘758 patent is partially in and partially out of the housing 516 once inserted to activate and lock to locking device 110, i.e., before and during locking use, as shown.”

The response is: See response to Observations II(a) and II(b).

d. In Observation II(d), Patent Owner states that Ex. 1507, White Dep. Tr. at 112:10–21 “is relevant because even though the witness disagrees that element 291 ‘is’ a captive security rod (see col. 14, line 29 of the ‘758 patent), he nevertheless admits that in Fig. 30, rod 291 is anchored to the housing, as shown, and is partially out of the housing.”

The response is that Mr. White testified that element 291 is not a captive security rod because if element 291 were inserted into a lock mechanism it would not activate the lock, and that “[y]ou would have to modify 291 as drawn right

here, heavily, to achieve that.” Ex. 1507 at 129:2–130:7. Mr. White further testified that as described in the patent, “it’s not even hinted at that the lock would interface with 291.” Ex. 1507 at 130:8–13. Mr. White further testified that one would have to “heavily modify the geometry of 291” to get it to engage lock mechanism 110, and he provided specific examples of modifications that would be required. Ex. 1507 at 130:14–134:15. During his redirect examination, Mr. White further testified that element 291 is not a captive security rod as claimed because it does not satisfy a number of “features” of the claims, such as “while it is anchored in the housing, it doesn’t directly interact with the lock. So there isn’t a lock engagement end,” and it therefore does not have a locking end as recited in the claims. Ex. 1507 at 188:17–24.

e. In Observation II(e), Patent Owner states that Ex. 1507, White Dep. Tr. at 128:12–135:12 “is relevant because he agrees that element 291 as shown in Fig. 30 is a captive security rod that, if modified as to scale, could be used to activate the locking device 110”

The response is: See response to Observation II(d).

f. In Observation II(f), Patent Owner states that Ex. 1507, White Dep. Tr. at 159:23–160:4 “is relevant because he agrees that the elements depicted in patent drawings are not always drawn to scale.”

The response is that the cited testimony is not relevant because it does not relate to any arguments raised by the Patent Owner in its Response.

g. In Observation II(g), Patent Owner states that Ex. 1507, White Dep. Tr. at 188:17–24 “is relevant because he contradicts his earlier testimony, i.e., he states that element 291 does not have a locking end, where he had already testified that if modified as to scale, inserting the other end of element 291 (which is opposite the end anchored in the housing as shown in Fig. 30) into locking device 110 would activate the locking device.”

The response is: See response to Observation II(d).

h. In Observation II(h), Patent Owner states that Ex. 1507, White Dep. Tr. at 40:17–42:21, 190:11–21 “is relevant because he admits he did not construe method claim 16 of the ‘758 patent.”

The response is: See response to Observation I(f).

June 6, 2016

Respectfully submitted,

/Michael R. Weiner/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 6, 2016, pursuant to 37 CFR § 42.6(b)(1) and (e), a copy of the foregoing PETITIONER'S RESPONSE TO PATENT OWNER'S MOTION FOR OBSERVATIONS ON CROSS-EXAMINATION OF RYAN WHITE is being electronically filed via the Patent Review Processing System (PRPS), and is being served via electronic mail on the Patent Owner as follows:

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