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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SIGHTSOUND TECHNOLOGIES, LLC,)	
)	Case No. 2:11-cv-01292-DWA
Plaintiff,)	Honorable Judge Donetta W. Ambrose
)	
v.)	
)	JURY TRIAL DEMANDED
APPLE INC.,)	
)	
Defendant.)	

SECOND DECLARATION OF DR. JOHN P.J. KELLY

I, John Kelly, hereby declare as follows:

I. INTRODUCTION

1. I am the same John Kelly who previously submitted the September 7, 2012 Declaration of Dr. John P.J. Kelly (“Kelly Decl.”) in the above captioned matter. I have personal knowledge of the facts and opinions set forth in this declaration, and, if called upon to do so, I would testify competently thereto.

2. In addition to the materials identified in my September 7 Declaration, in preparing my opinions, I have reviewed Plaintiff SightSound Technologies, LLC’s Opening Claim Construction Brief (“SightSound Brief”), the September 7, 2012 Declaration of J.D. Tygar, Ph.D. (“Tygar Decl.”), the exhibits to the September 6, 2012 Declaration of Sean M. Callagy (“SightSound Exhibits”), and other materials referenced herein.

II. ADDITIONAL OPINIONS REGARDING THE MEANING OF PARTICULAR CLAIM TERMS

A. **“TELECOMMUNICATIONS LINES”; “TELEPHONE LINES”; “LINES”**

3. As I explained in my September 7 Declaration, it is my opinion that one of ordinary skill in the art would understand the claim phrase “telecommunication[s] line[s],” as used in the asserted patents, to mean “an electronic line for communicating between computers, which requires end-to-end connectivity.” [See Kelly Decl. at ¶¶ 17-22]

4. It is also my opinion that one of ordinary skill in the art would understand the claim term “line,” as used in the asserted patents, to mean “wire.” [See Kelly Decl. at ¶¶ 23-28]

5. It is further my opinion that one of ordinary skill in the art would understand the claim phrase “telephone line,” as used in the asserted patents, to mean “electronic lines for

telephone calls.” [See, e.g., definition of “telephone line” in *IEEE Standard Dictionary of Electrical and Electronics Terms* (4th ed. 1988) at p. 992; definition of “telephone” in *Webster’s Ninth New Collegiate Dictionary* (1988) at p. 1212; definition of “line” in *Microsoft Press Computer Dictionary* (1991) at p. 210] A telephone call need not be person-to-person but could be between computer modems.

6. While it is my opinion that the claim phrases “telecommunication[s] line[s]” and “telephone line” exclude fiber optics and wireless communications, it is not my opinion that they exclude all access through the Internet. One may, for example, access the Internet using modems through “electronic lines” without the use of fiber optics or wireless communications.

7. Also, while it is my opinion that the claim term “line,” meaning “wire,” excludes wireless communications, it does not, by itself, exclude fiber optics or non-metal lines. For example, it is possible to refer to “optical wiring.” [See U.S. Patent No. 6,516,104]

8. I have reviewed the portions of the patents’ specifications, prosecution history, and re-examination history on which SightSound relies. [See SightSound Brief at pp. 11-16] Nothing in those portions alters my opinions or suggests to me that a person of ordinary skill in the art in 1988 would understand the claim phrases differently.

9. In addition to the reasons set forth in my September 7 Declaration, my opinions are supported by the fact that, in the prosecution history, the named inventor described “telephone lines” as “electrical lines.” [See ‘734 patent file history, 1/3/94 Hair Decl. at p. 5] One of ordinary skill in the art would understand “electrical lines” to mean “wires.”

10. My opinions are also supported by the fact that, in the re-examination history, Dr. Tygar stated that a “telephone call” could be made using “telephone lines, optical fibers, or cable.” [See ‘573 patent re-examination history, 5/17/07 Tygar Decl. at ¶ 14] One of ordinary

skill in the art, then, would understand that “optical fibers” and “cable” were different from “telephone lines.” Moreover, Dr. Tygar did not include wireless communications as an option for a “telephone call.”

11. I do not agree with Dr. Tygar’s opinion that “[i]n 1988, one of reasonable skill in the art would have understood ‘telecommunications lines’ to include telephone lines, fiber-optic cable, wireless networking, and several other mediums of electronic communication (such as cellular telephones and microwave transmissions).” [See Tygar Decl. at ¶ 19] I note that Dr. Tygar does not cite to any evidence in the patents, prosecution histories, or reexamination prosecution histories to support his opinion. [See Tygar Decl. at ¶¶ 17-25] Nor does Dr. Tygar, other than a single article described below, cite to any objective evidence in support of his opinion. [See Tygar Decl. at ¶¶ 17-25]

12. I understand Dr. Tygar’s reasoning to be, essentially, that because communication media other than “telecommunications lines,” “telephone lines,” and “lines” existed, one of ordinary skill in the art would understand such claim phrases to cover such media. I do not agree with Dr. Tygar’s premise that the existence of other media automatically means that one of ordinary skill in the art would consider them to be “telecommunications lines,” “telephone lines,” or “lines.” In fact, I believe that the opposite is true.

13. For example, Dr. Tygar cites a single article entitled “History of Wireless Local Area Networks (WLANs) in the Unlicensed Bands” in support of his argument that “in 1988 one skilled in the art would have been aware of local wireless networking protocols using radio frequencies.” [See Tygar Decl. at ¶ 24; SightSound Ex. 4] According to that article, “the first product to be certified that even remotely resembled a WLAN” was released “circa 1988.” [See SightSound Ex. 4 at p. 3] Therefore, although a person of ordinary skill in the art would have

known that local wireless networks existed in 1988, the language used by the Patents-in-Suit – “line” – excludes such technology.

14. With respect to fiber optics and types of wireless transmissions other than local wireless networks, Dr. Tygar offers no supporting evidence at all that they were considered “telecommunications lines” or “telephone lines” by a person of ordinary skill in the art. [See Tygar Decl. at ¶¶ 22-23]

15. Dr. Tygar further appears to believe that “end-to-end connectivity” excludes instances where “[i]nformation may be transmitted and only partially received (or not received at all).” [See Tygar Decl. at ¶ 25] I do not agree that this is the case, and Dr. Tygar does not explain why he or one of ordinary skill in the art would interpret “end-to-end connectivity” in such a fashion.

B. “ELECTRONIC”

16. As I explained in my September 7 Declaration, it is my opinion that one of ordinary skill in the art would understand the claim term “electronic,” as used in the asserted patents, to mean “through the flow of electrons.” [See Kelly Decl. at ¶¶ 29-33]

17. I have reviewed the definitions on page 320 of the *IEEE Standard Dictionary of Electrical and Electronics Terms* (4th ed. 1988), to which SightSound refers. [See SightSound Brief at p. 21; SightSound Ex. 3 at p. 320] None of the definitions on that page, including the definition for “electronic,” alters my opinion or in any way suggests to me that a person of ordinary skill in the art in 1988 would understand the claim term “electronic” to mean something different.

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