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INFORMATION SUBJECT TO PROTECTIVE ORDER**

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

SIGHTSOUND TECHNOLOGIES LLC,

*Plaintiffs*

v.

APPLE INC.,

*Defendant*

Civil Action No. 2:11-cv-01292-DWA

**EXPERT REPORT OF MARK M. GLEASON, CPA/ABV/CFF, CVA, CLP**

On behalf of SightSound Technologies LLC, I hereby submit the following Expert Report pursuant to Fed. R. Civ. P. 26(a)(2)(B).

[REDACTED]

XI. PREJUDGMENT INTEREST..... 165  
XII. SUPPLEMENTATION AND REBUTTAL..... 167

**I. QUALIFICATIONS**

1. I am the President and a Managing Director of Gleason IP, a division of Gleason & Associates, P.C. (“Gleason”). Gleason is an accounting and consulting firm I started in 1988 which provides services primarily in the areas of Intellectual Property, Valuation, Litigation Support, and Forensic Accounting and Financial Reorganization. Prior to starting Gleason, I worked for the global accounting firm of PriceWaterhouseCoopers and was the Chief Financial Officer of a construction and manufacturing company. I have experience in the areas of accounting, finance, and economics in various roles at corporations and public accounting firms. A complete listing of my work experience is attached as **Appendix 1** to this report.

2. I graduated from the University of Pittsburgh in 1972 with a Bachelor of Arts Degree in Economics. I received a Masters Degree in Business Administration from the University of Pittsburgh in 1973. I am a Certified Public Accountant (“CPA”) licensed to practice in the Commonwealth of Pennsylvania. I am also Accredited in Business Valuation (“ABV”) and Certified in Financial Forensics (“CFF”) by the American Institute of Certified Public Accountants (“AICPA”). I have been designated as a Certified Valuation Analyst (“CVA”) by the National Association of Certified Valuators and Analysts (“NACVA”) and a Certified Licensing Professional (“CLP”) by the Licensing Executives Society (“LES”). I have been a continuing education speaker on numerous occasions on a variety of financial, economic, accounting and valuation topics. I have presented to various bar associations and organizations

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on the issues of damages determination, valuation, intellectual property matters, financial reorganization, and other topics.

3. I have extensive knowledge and experience in analyzing and quantifying damages in patent infringement litigation. My intellectual property experience includes determining damages (including lost profits and reasonable royalty analyses in patent infringement matters) valuing intellectual property, analyzing secondary considerations of nonobviousness, and performing market analyses involving success drivers. Particularly relevant to this matter, I have performed numerous reasonable royalty analyses using all information produced through discovery, independent research, and the *Georgia-Pacific* Factors in determining reasonable royalty rates and damages. I have experience in a broad range of industries including technology, manufacturing, pharmaceutical, healthcare, telecommunications, construction, and other industries.

4. I also have extensive experience in analyzing, calculating, and determining damages in various dispute settings. I have been designated as a testifying expert in federal and state courts, chancery court, and by various domestic and international arbitration panels. I have analyzed damages involving breach of contract claims, intellectual property disputes, alleged fraud and forensic investigations, shareholder disputes, insurance recovery matters, professional liability disputes, class action suits, and other commercial disputes.

## **II. PRIOR TESTIMONY AND FEES**

5. Gleason is being compensated for the work performed on this engagement based on the time incurred by me at a rate of \$525 per hour and by other Gleason personnel (under my direct supervision) at rates ranging from \$80 to \$375 per hour. Our compensation is not affected

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by the outcome of this case. Attached as **Appendix 1** is a copy of my curriculum vitae. I have not authored any articles in the past ten years. **Appendix 2** contains a list of the cases in which I have provided expert testimony, either through deposition or at trial, during the last four years.

**III. OBJECTIVE OF THE ENGAGEMENT**

6. The objective of this engagement was to determine, with a reasonable degree of accounting and professional certainty, the amount of financial damages experienced by SightSound Technologies LLC (“SightSound”)<sup>1</sup> as a result of the alleged infringement of U.S. Patent No. 5,191,573 (the “ ‘573 Patent”) and U.S. Patent No. 5,966,440 (the “ ‘440 Patent”) (collectively the “Patents-in-Suit”) by Apple Inc. (“Apple”).

7. In patent infringement litigation, the claimant’s damages, if proven, shall be adequate to compensate for the infringement but in no event shall the damages be less than a reasonable royalty.<sup>2</sup> The owner of an infringed patent may seek recovery of either lost profits, a reasonable royalty, or in certain circumstances, some combination of both lost profits and reasonable royalty related to the infringing sales.<sup>3</sup> I understand from counsel that SightSound is not seeking damages in the form of lost profits in this matter. Therefore, I have prepared an analysis of reasonable royalty damages experienced by to SightSound for the infringement of the Patents-in-Suit by Apple. I have assumed that a hypothetical negotiation for a reasonable royalty between SightSound and Apple would take place on April 28, 2003, the date Apple launched its

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<sup>1</sup> Unless otherwise noted, “SightSound” refers to the Plaintiff in this action as well as all corporate predecessors-in-interest.

<sup>2</sup> See 35 U.S.C. §284.

<sup>3</sup> Litigation Services Handbook (Fifth Edition), Chapter 19, p.18. Also, see *State Industries, Inc., v. Mor-Flo Industries, Inc.* decision from the U.S. Court of Appeals for the Federal Circuit.

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iTunes Store.<sup>4</sup> I understand from counsel that damages in this matter are limited to the six years preceding the commencement of a cause of action for infringement.<sup>5</sup> While my damages calculation begins on October 10, 2005, this limitation on damages does not change the date of the hypothetical negotiation of April 28, 2003, the date of first infringement.<sup>6</sup> I have calculated damages through December 29, 2012, using the most recent financial information provided by Apple. I reserve the right to update my analysis of damages as additional financial information is provided by Apple.

8. I understand from counsel that SightSound may also be entitled to recover other damages including prejudgment interest, punitive damages, legal fees, and expenses. While I have not calculated the amount of these additional potential categories of damages, I reserve the right to amend or supplement this report for these potential damages.

9. My analysis is based upon the assumption that there will be a finding of liability against Apple as a result of its infringement of the Patents-in-Suit. The merits of SightSound's position on these liability issues are beyond the scope of this engagement.

#### **IV. TASKED PERFORMED AND INFORMATION REVIEWED**

10. To accomplish the objective of this engagement, I<sup>7</sup> have performed the following tasks:

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<sup>4</sup> At launch, Apple's online music store was named the iTunes Music Store and is often referred to as iTMS. The store was subsequently renamed the iTunes Store. Throughout the remainder of this report, I will refer to it as the iTunes Store.

<sup>5</sup> See 35 U.S.C. §286.

<sup>6</sup> Litigation Services Handbook (Fifth Edition), Chapter 19, p.21. Also, see *LaserDynamics, Inc., v. Quanta Computer, Inc. et al.*, 694 F.3d 51 (Fed. Cir. 2012).

<sup>7</sup> I, referred to throughout this report, represents myself and other Gleason personnel. All work performed was either done by myself or others under my direct supervision.

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